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THE

AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.

WITH EXPLANATION NOTES, FORMS, AND PRECEDENTS, &c.

J. THEODORE DODD, M.A.

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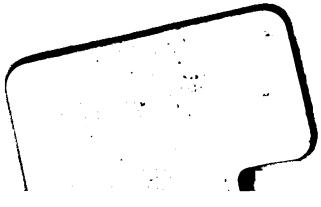

THE

AGRICULTURAL HOLDINGS ACT, 1883, EXPLAINED;

WITH

NOTES, FORMS, AND PRECEDENTS.

THE

AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883,

WITH

Explanation, Notes, Forms, and Precedents,

INCLUDING

PRECEDENTS OF AGREEMENTS FOR

"SPECIFIC" AND "FAIR AND REASONABLE" COMPENSATION, AND THE "FARMER'S AGREEMENT,"

AND A

CHAPTER ON MODERN LEASES;

WITH

APPENDIX CONTAINING THE ACT OF 1875 (WHERE IT DIFFERS FROM THE NEW ACT).

By J. THEODORE DODD, M.A.,

Barrister-at-Law, of Lincoln's Inn.
Author of "The Settled Land Act Explained."

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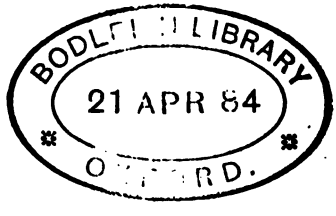

PREFACE.

THE object of this book is to assist people to use the Act, not to teach them how to evade it. So that the explanations of the Act and the notes to the sections, and the Forms of Consents, Notices, &c., form the principal portion of the work. It contains, however, among the Precedents, several forms of Agreements which provide compensation for the tenant in a different manner, or in accordance with a different principle, from that which the Act prescribes in the absence of agreement.

It should not be assumed that all agreements must necessarily be drawn with the intention of depriving the tenant of his rights to fair compensation, and that, therefore, tenants should resist attempts to induce them to execute any agreement with respect to compensation. But all depends on the nature and terms of the agreement. If landlords will offer liberal compensation, an agreement may be made, if it is properly drawn, both a saving of expense to the landlord and tenant, and an actual protection to the tenant from a possible loss of all his rights to compensation; for if the tenancy determines *suddenly*, he will, in the absence of any agreement, run a risk of losing his rights under the Act, in consequence of his not being able to comply with sect. 7, which requires that he shall give two months' notice: (see pages 53-55 and Forms 40, 41, pages 153-156.)

Also, by means of an agreement, the "sitting tenant" may be authorised to claim compensation, either absolutely, or in case of the landlord increasing his rent: (see Forms 39, 40, 44, pages 151, 153, 160.)

The last precedent in the book has been drawn expressly with the intention of meeting the views of farmers as expressed by the "Farmers' Alliance," and is therefore called the "Farmer's Agreement." Some clauses have been added in brackets to meet landlords' views.

The Act does not prevent landlords from imposing any restrictions with regard to husbandry or the sale of crops; so that the tenant may still be tied down to some particular mode of cultivation. It is, however, clear that the restrictions contained in the old-fashioned leases are not suited to the modern conditions of agriculture; and some suggestions with regard to framing leases in accordance with the necessities of the times will be found in Chapter V. (page 110).

The Act of 1875, so far as it differs from the new Act, has been added in the appendix, both for the sake of comparison, and because it continues for some purposes still unrepealed: (sect. 62, page 106.)

In writing this book it has been the object of the author to avoid technicalities as far as possible.

J. Theodore Dodd.

3, *Old Square, Lincoln's Inn,*
November, 1883.

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ADDENDA AND ERRATA.

Page 41, line 10.—In the third paragraph, after "fruit bushes," *add* "and in the new Act works 'for the application of water power' are specially mentioned. See improvement No. 8, page 108, and compare page 118."

Page 54, note (d).—*For* "*Law Times*, July 28th, page 325," *read* "*Law Times*, July 28th, page 235."

Page 63, note (b).—*For* "Thornburn *v.* Barnes" *read* "Thorburn *v.* Barnes."

Page 99.—*For* "Widgery *v.* Pepper" *read* "Widgery *v.* Tepper."

Page 131.—*For* "Chatham *v.* Hampson" *read* "Cheetham *v.* Hampson."

THE

AGRICULTURAL HOLDINGS ACT (1883) EXPLAINED.

CHAPTER I.

SKETCH OF THE ACT.

THE main object of this Act is to give to the tenant farmer on quitting his farm at the determination of his tenancy compensation for his improvements made upon his farm.

However, it does not give him compensation for all his improvements, but only for those which are expressly mentioned in the first schedule to the Act. These specified improvements are twenty-three in number, and no doubt comprehend most of the improvements which may be made upon a farm; even the modern "silo" is included.

It is important to notice that no compensation is given for good cultivation or good farming, except so far as such good cultivation or farming falls under one of the specified heads. There can be no claim for general attention, careful weeding, judicious cropping, &c., so that there still may be cases where a farmer takes a farm that is in bad condition or "out of heart," and leaves it in good condition, and yet is not entitled to compensation. Also in certain cases the tenant can make no claim for compensation in respect of improvements begun

by him shortly before he quits the holding; but this does not apply to "manures."

In no case can the sitting tenant claim compensation.

The twenty-three improvements for which compensation may be demanded are divided into three classes:—

(i.) Those for which *consent* of the "landlord"[a] is required. These we shall find it convenient to style "first-class" or "permanent" improvements.

(ii.) Those in respect of which previous *notice* to the "landlord" is required. "Drainage" is the only improvement under this head. We shall call it a "second-class" or "durable" improvement.

(iii.) Improvements to which consent of landlord is not required. These we shall call "third-class" or "transient" improvements.

No notice to the landlord is necessary before making these transient improvements.

We should add that the phrases "permanent," "durable," "transient," are not in the Act itself, but we have borrowed them from a Government paper, which is printed below (Chap. III.).

The first schedule is as follows:—

FIRST SCHEDULE.

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

(1.) Erection or enlargement of buildings.
(2.) Formation of silos.
(3.) Laying down of permanent pasture.
(4.) Making and planting of osier beds.
(5.) Making of water meadows or works of irrigation.
(6.) Making of gardens.
(7.) Making or improving of roads or bridges.
(8.) Making or improving of watercourses, ponds, wells, or

[a] The words "landlord," "tenant," &c., are defined by sect. 61 of the Act. See page 8, below.

reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.

(9.) Making of fences.
(10.) Planting of hops.
(11.) Planting of orchards or fruit bushes.
(12.) Reclaiming of waste land.
(13.) Warping of land.
(14.) Embankment and sluices against floods.

PART II.

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

(15.) Drainage.

PART III.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS NOT REQUIRED.

(16.) Boning of land with undissolved bones.
(17.) Chalking of land.
(18.) Clay-burning.
(19.) Claying of land.
(20.) Liming of land.
(21.) Marling of land.
(22.) Application to land of purchased artificial or other purchased manure.
(23.) Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.

The consent and notice required before execution of the first and second class improvements respectively, must be previously given in writing. As to effect of tenant's notice of intention to execute drainage, and landlord's option to drain instead, see sect. 4.

Special provisions are made both as to improvements executed before 1st January, 1884, and as to improvements executed after that date on holdings under contracts of tenancy current at that date.

The measure or amount of the compensation is to be the value of the improvement to an incoming tenant without reckoning as part of the improvement "what is due to the inherent capabilities of the soil."

Sect. 6 contains some regulations by means of which the compensation may be augmented or reduced. Sects. 7-28 relate chiefly to procedure on claims for compensation by the tenant, and counter-claims by the landlord. Sects. 25, 26 contain special provisions as to infants, married women, &c.

The right of a landlord to counter-claim against a tenant for waste, &c., is recognised by the Act (sects. 6, 7).

The landlord and tenant may agree as to the amount of compensation; if they do not it will be settled by arbitration, *i.e.*, by "referees" or an "umpire" (sects. 9-22). There is a limited right of appeal from the referees, or umpire, to the law courts where the compensation exceeds 100*l.* (sect. 23.)

The landlord on paying to the tenant the compensation may, with the assistance of the County Courts, charge it on the land. In some cases "capital money" arising under the Settled Land Act, 1882, will be available for repaying a landlord for cost of improvements made by him, or for paying off such a charge (sect. 29.)

The word "landlord" is defined by the Act to mean "any person for the time being entitled to receive the rents and profits of any holding" (sect. 61). It includes, therefore, not only absolute owners, but tenants for life, &c., and in many cases trustees and other persons entitled to receive the rents, but not receiving them for their own benefit.

A landlord, although only a limited owner, has all the powers as to improvements given by the Act to landlords (sect. 42). But in the case of lands belonging to the Crown, the Duchies of Cornwall and Lancaster, and Ecclesiastical and Charity lands, this is subject to certain special provisions (sect. 42) contained in sects. 35-40.

When a landlord is a trustee, &c., he will not be personally liable for the compensation; but the compensation may be realised by means of a charge on the land (sect. 31).

The Act does not apply to Scotland or Ireland (sect. 64). It applies only to agricultural and pastoral holdings and

(apparently) to market gardens (sect. 54). It applies to small as well as to large holdings.

It applies to Crown, duchy, ecclesiastical and charity lands (sects. 35-40).

A tenant cannot by any contract, &c., be deprived of his right to compensation for improvements (sect. 55), though in certain cases landlord and tenant may make agreements as to the compensation, which may to some extent supersede the mode of estimating compensation which the Act provides.

Arrangements may be made by which the incoming tenant, instead of the landlord, may make the actual payment of the compensation to the outgoing tenant (sect. 56).

Although, as we have said, the main object of the Act is to give compensation for certain improvements, it also contains several other provisions intended to benefit the tenant-farmer and encourage agriculture.

It empowers the tenant, in certain cases, to remove buildings and fixtures which he has erected on, or affixed to, the holding (sect. 34).

It extends, in certain cases, the time required for notice to quit (sect. 33); but this section, even where it otherwise applies, may be excluded by agreement in writing.

The Act also enables the landlord, under certain conditions, in tenancies from year to year, to resume possession of *part* of the holding "for certain purposes" without giving notice to quit as to the entire holding. The purposes are erection of cottages, providing gardens, working mines, quarries, &c., making water-courses, roads, &c., and other improvements specified in sect. 41.

The Act also contains a provision (sect. 43) to meet cases where trustees, &c., are empowered to make a lease at "the best rent," and the tenant, to whom they are about to grant the lease, has previously executed improvements on the holding. It enacts that in such cases the trustees, &c., in estimating the best rent, shall not be bound to take into account

against the tenant the value of his own improvements. This is only permissive.

The Act also contains provisions restricting the landlord's powers of distress with respect to holdings which fall within the scope of the Act.

It prevents a landlord from distraining for more than one year's rent, except in certain cases (sect. 44). It partially protects from distress "live stock" taken in by the tenant to feed, and wholly protects hired agricultural machinery, and live stock, being the property of some person other than the tenant, and on the premises solely for breeding purposes (sect. 45). It also contains other regulations as to distress, which will tend to protect tenant-farmers from expense and extortion (sects. 46-52).

The Act repeals the Agricultural Holdings Acts, 1875, 1876, but keeps them alive for certain purposes (sect. 62, see also sects. 2, 5, 34, 57, 60.)

The Act does not altogether and in all cases take away a tenant's right to claim under the custom of the country, but of course he cannot claim for the same improvements both under this Act and under a custom.

CHAPTER II.

SUMMARY OF THE ACT IN ORDER OF ITS SECTIONS.

After giving the above brief sketch of the Act we proceed to give a summary of it in the order of its sections. The Act is divided into three parts. Part I., sects. 1-43, is headed "Improvements." It includes not only provisions relating to compensation for improvements, but also a section (33) relating to "notice to quit;" another (34) as to fixtures; another (sect. 41) as to resumption of possession by the landlord for certain purposes; and another (sect. 43) as to "best rent" in leases under powers. The sub-head, "Resumption for Improvements and Miscellaneous" (sects. 41-43) includes a very important provision (sect. 42) as to "limited owners." (a)

Part II., sects. 44-52, is headed "Distress." Part III., sects. 53-64, is headed "General Provisions," but many of its sections relate solely to improvements.

Sect. 61 is the interpretation clause, and contains several important definitions and explanations. It would probably have been more convenient had it been placed at the beginning instead of at the end of the Act. We shall set it out here in full. We call especial attention to the definition of the word "landlord." The explanation of the phrase "tenancy from year to year," is important, especially with reference to sect. 5.

In this Act—

"Contract of tenancy" means a letting of or agreement for the letting land for a term of years, or for lives, or for lives and years, or from year to year:

(a) See page 14, below.

A tenancy from year to year under a contract of tenancy current at the commencement of the Act shall for the purposes of this Act be deemed to continue to be a tenancy under a contract of tenancy current at the commencement of this Act until the first day on which either the landlord or tenant of such tenancy could, the one by giving notice to the other immediately after the commencement of this Act, cause such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act:

"Determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause:

"Landlord" in relation to a holding means any person for the time being entitled to receive the rents and profits of any holding:

"Tenant" means the holder of land under a landlord for a term of years, or for lives, or for lives and years, or from year to year:

"Tenant" includes the executors, administrators, assigns, legatee, devisee, or next-of-kin, husband, guardian, committee of the estate or trustees in bankruptcy of a tenant, or any person deriving title from a tenant; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of such executors, administrators, assigns, and other persons as aforesaid;

"Holding" means any parcel of land held by a tenant;

"County court," in relation to a holding, means the county court within the district whereof the holding or the larger part thereof is situate;

"Person" includes a body of persons and a corporation aggregate or sole:

"Live stock" includes any animal capable of being distrained;

"Manures" means any of the improvements numbered twenty-two and twenty-three in the third part of the First Schedule hereto; [b]

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation

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[a] See page 2, above. | [b] See page 3.

for improvements, or under any agreement made in pursuance of this Act.

In the following summary we have retained the headings and sub-headings which are printed in the Act.

PART I.

Compensation for Improvements.

Sect. 1 gives a general right (subject to the provisions of the Act) to the "tenant" quitting at the "determination of a tenancy" for certain improvements, specified in the first schedule, made by him on his "holding." The compensation is obtainable from the "landlord," but is such sum as fairly represents the value of the improvement to "an incoming tenant." But compensation cannot be claimed for what "is justly due to the inherent capabilities of the soil." [a]

As to Impovements Executed before the Commencement of Act.

Sect. 2 enacts that compensation shall not be payable for improvements executed before 1884, except (1) when the tenant has since 1873 made a Third Class improvement [b] and is not otherwise entitled to compensation for it (2) where he has since 1873 made a First or Second Class improvement, [c] and is not entitled to compensation for it *and* the landlord, during 1884, declares in writing his consent to the making of such improvement.

As to Improvements Executed after the Commencement of Act.

Sect. 3. Compensation is not to be payable for First Class improvements except they are made with previous written *consent* of the landlord or his authorised agent. Consent may be given conditionally, and terms agreed upon.

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[a] Several words and phrases contained in this section are defined and explained by sect. 61. See page 8. The full list of improvements is given at pages 2, 3. The Act commences on Jan. 1, 1884. (Sect. 53.)

[b] See page 3, above.

[c] See pages 2, 3, above.

Sect. 4. Compensation is not to be payable for a Second Class improvement (*i.e.* drainage), except the tenant has given previous *notice* in writing to the landlord or authorised agent. The landlord may then do the drainage himself, and charge the tenant interest, or may agree with the tenant as to terms of compensation, &c. If the landlord will do nothing, then the tenant may drain and charge compensation.

Sect. 5. In the case of a tenancy under a contract of tenancy current [a] on 1st January, 1884, where *specific* compensation is already provided [b] for any improvement, such specific compensation only is to be paid.

In the case of a tenancy under a contract of tenancy beginning [c] after 1st Jan., 1884, where any "particular agreement in writing" secures to the tenant "*fair and reasonable compensation*," such compensation only is to be paid.

[The compensations payable under sects. 3-5 are to be deemed substituted for compensations under the Act].

Regulations as to Compensation for Improvements.

Sect. 6. In ascertaining the amount of compensation payable there is to be reckoned in reduction : (*a*) benefits given by landlord in consideration of the tenant executing the improvement ; (*b*) in case of "manures," [d] a deduction for certain hay, straw, &c., sold off the holding ; (*c*) money due to landlord for rent, waste, breach of covenant, &c. But the compensation may be augmented by sums due to tenant for breach of covenant, &c., by landlord. There is a limitation of four years as to compensation from tenant for waste, &c.

Procedure.

Sects. 7-28 relate to procedure. We shall only give a very brief summary of these in this place. A tenant claiming compensation must, at least two months before the

(a) See page 8, top line.
(b) *i.e.*, by *written* agreement, custom, or the Act of 1875.
(c) See page 7 for what is a contract of tenancy.
(d) See page 8.

determination of the tenancy, give written notice of his intended claim. The landlord may then counter-claim (sect. 7). The landlord [a] and tenant may agree as to the compensation to be paid. If not, it will be settled by a reference (sect. 8). There may either be a single referee or two referees and an umpire. In some cases the County Court may appoint a referee. Usually the two referees will appoint the umpire, but sometimes the appointment may be made by the judge or registrar of the County Court [b], and sometimes by the Land Commissioners (sects. 9-11).

Sect. 12 regulates the mode of submission to the reference.

Sects. 13 and 14 enable the referees or umpire to call for production of documents, administer oaths, &c., and proceed (after notice) in the absence of parties.

Sects. 15 and 16 regulate the form and time of making of the award. (See also sects. 19, 20, 21.)

Sect. 17 relates to compensation which under sects. 3, 4, 5, is substituted for compensation under the Act.

Sect. 18 empowers umpire to act if the two referees fail to make their award at the proper time.

Sect. 19. The award is to specify various details.

Sect. 20 provides for costs. They are mainly in discretion of referees and umpire, but subject to taxation in County Court.

Sect. 21. The award shall fix a day not sooner than a month for payment of compensation, costs, &c.

Sects. 22 and 23. Submission not to be removable into any Court, and award not to be questioned except the compensation exceeds 100*l.*, when there is an appeal to the County Court on *four* grounds specified in the Act. The decision of that court is final, except that the judge "shall" on request "state a special case on a question of law" for the High Court. The decision of the High Court is final.

(a) Even though he is only a limited owner. See sect. 42.

(b) See page 8, above.

Sect. 24. If the compensation, &c., is not paid within fourteen days after it is due, it will be recoverable, upon order made by the County Court judge, through the County Court.

Sect. 25. Where landlord or tenant is an infant without a guardian or of unsound mind "not so found," County Court may appoint a guardian for the purposes of the Act.

Sect. 26. A "next friend" of a married woman may also be appointed by the County Court. Some married women may act as if they were unmarried, and others are to be separately examined by the County Court judge.

Sect. 27. Costs in the County Court to be in discretion of Court. Lord Chancellor may prescribe a scale.

Sect. 28. Notices, &c., may be sent by registered letter.

Charge of Tenant's Compensation.

Sect. 29 empowers a landlord, on paying the tenant his compensation, to obtain from the County Court a *charge* on the holding for repayment of the amount with interest, and by instalments. But where the landlord is not absolute owner no instalment or interest is to be payable after the improvement will become exhausted. The instalments will be personal estate, and no forfeiture will accrue. Capital money arising under the Settled Land Act, 1882, may be applied in various cases.

Sect. 30. The sum charged by the County Court will be a charge on the landlord's interest, and for all subsequent interests except where the landlord himself is a tenant, and then the charge will only fall on his own interest.

Sect. 30. When the landlord is in the position of a trustee, &c., the compensation, &c., is not recoverable from him personally, but he may pay it and obtain a charge on the holding, or if he does not pay it the tenant may obtain the charge.

Sect. 32. Certain companies may take and assign charges made under the Act.

NOTICE TO QUIT.

Sect. 33. In certain cases, instead of a half year's notice to quit, a year's notice is to be necessary. [This is a re-enactment of sect. 51 of the Agricultural Holdings Act, 1875.] This provision may be excluded by agreement in writing.

FIXTURES.

Sect. 34. Fixtures and buildings affixed or erected by the tenant to be his property in certain cases, and to be removable under certain limitations, subject to a right of the landlord to purchase.

CROWN AND DUCHY LANDS.

Sects. 35-37. The Act applies to lands belonging to the Crown and Duchies of Cornwall and Lancaster. Provision is made for some officer to represent the "landlord" and for raising money to pay the compensation.

ECCLESIASTICAL AND CHARITY LANDS.

Sect. 38. An archbishop or bishop is not to exercise the powers of a "landlord" without the consent of the Estates Committee of the Ecclesiastical Commissioners.

Sect. 39. An incumbent of a benefice is not to exercise the powers of a "landlord" without the consent of the Patron or the Governors of Queen Anne's Bounty. "Queen Anne's Bounty" may pay compensation, and through the County Court obtain a charge on the holding.

Sect. 40. Trustees for ecclesiastical or charitable purposes may not exercise the powers of the Act as to charging land without consent of the Charity Commissioners.

[Under ss. 38-40 the consent must be given by "previous approval in writing."]

RESUMPTION FOR IMPROVEMENTS AND MISCELLANEOUS.

Sect. 41. In a tenancy from year to year, a landlord may give notice to quit from any part of the holding, with a view

to making various improvements specified in the section, and this notice will be valid, although it relates only to part of the holding. The provisions of the Act as to compensation are to apply. The tenant is to be entitled to a proportionate reduction of rent, or he may, by return-notice to the landlord, elect to accept the landlord's partial notice as a notice to quit the holding entirely.

Sect. 42 enables a "landlord" (see sect. 61), whatever his estate and interest, to exercise the powers given by this Act to landlords. This is subject, however, to ss. 38-40. [a]

Sect. 43. Where a lease is authorised to be made at "the best rent" the person exercising the power is not to be obliged to take into account against the tenant the value of any improvements made or paid for by the tenant on the holding.

PART II.

Distress.

Sect. 44. Landlord may not distrain for more than one year's rent of any holding to which this Act applies. There is special provision for arrears due at the time of the passing of the Act (25 August, 1883). There is also provision for cases where by the ordinary course of dealing between landlord and tenant actual payment of rent, though due, has been deferred for a quarter or half year.

Sect. 45 gives a partial protection from distress for rent to "live stock" [b] belonging to another person, taken in by a tenant of a holding to which this Act applies, to be fed at a fair price. Agricultural machinery belonging to another person, and hired to the tenant, and live stock on the premises "solely" for breeding purposes, are absolutely protected.

Sect. 46 gives a summary remedy for distraining contrary to this Act, &c.

(a) See page 13, above.

(b) See page 8, above.

Sect. 47. When compensation has been ascertained before the landlord distrains, he may only distrain for balance of rent due.

Sect. 48 excludes *certiorari*.

Sect. 49 limits costs of distress when the sum "demanded and due" exceeds 20*l*. (a).

Sect. 50 repeals so much of 2 Will. & M. c. 5, as requires appraisement before sale. "The tenant or owner of the goods" (*sic*) may require the goods to be removed to auction room and sold, but must pay costs of removal, &c.

Sect. 51 enables the tenant or owner of the goods to get a period of five days allowed for replevy extended to fifteen days.

Sect. 52. Bailiffs to levy distress on the holdings are to be appointed by the County Court judge, who also will have power to remove them for misconduct.

[Sects. 44, 45, 49, 50, 51, 52, are expressly limited to holdings to which the Act applies, so they do not alter the law of distress generally.]

PART III.

General Provisions.

Sect. 53. Act to come in force on 1st January, 1884.

Sect. 54 excludes certain holdings from scope of Act.

Sect. 55. Any contract made by any tenant by which he is deprived of compensation in respect of any improvement mentioned in the 1st Schedule (b) is void so far as it deprives him of such right. This does not apply to compensation which the Act itself expressly permits to be substituted.

Sect. 56. Where an incoming tenant, with written consent of landlord, has paid outgoing tenant the compensation under the Act, the incoming tenant when he quits will be entitled to claim.

Sect. 57. If a tenant can claim compensation under the

(a) See second schedule to the Act. | (b) See pages 2, 3, above.

Act he must do so; if not the Act does not deprive him of any other mode of claim.

Sect. 58. A tenant is not to lose his compensation on quitting the holding, merely because be has remained in the holding during changes of tenancy.

Sect. 59. This restricts the right of a tenant to compensation for improvements if made when he is about to quit. This does not affect his compensation for "manures." (a)

Sect. 60 contains a general saving of all rights, powers, and remedies not expressly taken away by the Act.

Sect. 61 is the Interpretation Clause. It is fully set out at pages 7, 8, above.

Sect. 62 contains repeals of the Agricultural Holdings Acts, 1875, 1876, but with important savings, including savings of rights of compensation for certain improvements made before 1st of January, 1884, and in the case of contracts of tenancy current at that date, afterwards; and also of rights as to fixtures affixed before the same date.

Sect. 63. Short title.

Sect. 64. Act not to apply to Scotland or Ireland.

The First Schedule contains a complete list of the improvements for which compensation may be claimed under this Act. It is set out at pages 2, 3, above.

The Second Schedule contains scale of costs in Distress when the sum "demanded and due" exceeds 20*l.* (b).

(a) See page 8, above.

(b) See sect. 49.

CHAPTER III.

GOVERNMENT MEMORANDUM ON THE AGRICULTURAL HOLDINGS BILL.

THE following important memorandum for the use of the Cabinet was published in July, 1883, [a] before the Act was passed, and while it was, as a Bill, under the consideration of Parliament. It is, of course, of no legal authority, but possesses considerable interest as showing generally the objects which Mr. Gladstone's Government had in view, and as giving the opinions on certain points of a person in the confidence of the Cabinet. It must be remembered, however, that the Act does not adopt the definition of "improvements" suggested by Dr. Johnson, but actually enumerates those for which it gives compensation; and also that, after the memorandum was written, a provision, [b] excluding what was due to the inherent capabilities of the soil from being computed in the tenant's favour, was inserted in the Bill, and is now part of sect. 1 of the Act.

The text of the memorandum is as follows:—

THE AGRICULTURAL HOLDINGS BILL.

The object of this Bill is to secure compensation to the tenant for his improvements.

Before, however, stating the specific mode provided by the Bill for the purpose of carrying this object into effect, it may be well to make some general observations with respect to improvements, and the conditions and restrictions subject to which any legislation on the subject of improvements must be made.

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[a] See *Times*, July 16, 1883, from which we reprint the memorandum.

[b] See page 25.

"Improvement" is defined by Johnson as the "advancement of anything from good to better;" we amend "a bad, but improve a good thing." The first question then is, what is an improvement in the case of an agricultural tenancy? An agricultural tenancy consists in the loan by the owner of the soil of the use of that soil to a tenant for farming purposes in consideration of the tenant remunerating the owner for his loan by payment of rent. If the farm is in a deteriorated condition at the time of the tenancy, the raising of that farm from its deteriorated condition to a normal state of cultivation is not an improvement, for it is amending the bad, and not advancing the good to better; and it is supposed that in the contract of tenancy account will necessarily be taken by the tenant of the deteriorated condition of the farm, and the rent be reduced accordingly.

Before, therefore, improvement begins, a certain datum line, so to speak, of cultivation must be settled, and that datum line may be taken to be the ordinary state of farming in the country. For example, a farm in Aberdeenshire will normally be in a better state of cultivation than a farm on the west coast of Ireland, and consequently an amelioration in a farm on the west coast of Ireland may be an improvement which is not an improvement in an Aberdeenshire farm.

Having settled this datum line, the next observation is that it is the duty of the tenant, or the usufructuary, as he is called in Roman law, to exercise his temporary right over the thing lent in such manner as a proprietor desirous of preserving his property would do. Therefore, he is bound to keep the farm in a good state of cultivation, and the so keeping the same does not constitute an improvement.

Improvements, then, may be defined (to use a technical expression) to be works of agricultural supererogation, or works advancing the farm beyond the point of excellence to which the tenant is obliged by his duty to advance.

Now, these improvements are usually divided into three classes —permanent improvements, durable improvements, and transient improvements. The building a house and the reclamation of waste land are examples of permanent improvements. The drainage of land and the marling of land are examples of durable improvements. The application to the land of artificial manures, or the consumption on the holding by cattle of cake or other feeding stuff not produced on the holding are examples of transient improvements.

Beginning with the last class, "the transient improvements," it may be noticed that really and in fact the word "improvement" ought not to be applied to this class of works, inasmuch as they require renewal, and improve the land or make it better for a short time only. The same observation applies in a lesser degree to the durable improvements, and the word "improvement," logically speaking, is applicable only to improvements which make the land permanently better; in other words, to permanent improvements. The different character of these improvements leads in effect to a different mode of compensation, and for a different reason. The tenant ought to be compensated only for transient or durable improvements, if he quits the farm before the effect of such improvements is exhausted; in other words, if he quits the farm before his improvements have ceased to be improvements or "betterments" of the land. For example, suppose the effect of sheeping, as it is called, to last for two years, and the tenant is turned out of his farm in one year, he is entitled to the value of one year's sheeping, not because it is technically an improvement, but because he has invested his capital in a work of which he has not received the full benefit. In fact, a tenant's right to compensation for manures in such a case is precisely similar to his right to emblements, which right rests on the principle that a farmer is entitled to reap or to be paid for the crop which he has sown, but which he is compelled to leave before it grows ripe. On the other hand, he is entitled to remuneration for permanent improvements, because he has, without any obligation on his part, added to the permanent value of the landlord's property.

The necessity of an improvement being a betterment of the holding gives rise to the condition that it must be suitable to the holding on which it is made, for otherwise a rich tenant might add a ballroom to his farmhouse and charge his landlord with it as a permanent improvement, although the ballroom would not only not increase, but would diminish, by reason of the expense of its maintenance, the value of the holding.

Similarly with respect to durable improvements, they must be such as are in accordance with the agricultural requirements of the land. For example, if a man limes land which ought not to be limed, he must not call upon the landlord to requite him for it. Again, if he drains land deeply where shallow draining would be better, he has made a mistake, and must bear the consequences of his mistake.

Such would appear to be the general principles applicable to the

determination of the works which ought to be deemed agricultural improvements, apart from any legislative enactments.

A question next in importance to that of deciding on the works which are to be deemed improvements is the inquiry as to what is the value of an improvement, and how ought it to be estimated?

First, it would seem clear that the tenant is entitled only to improvements made by him. Any increase of value which arises from the inherent capabilities of the soil is a profit arising from the landlord's right of ownership, and not from the usufructuary right of the tenant. For example, a tenant, by diverting a stream at an expense of 50*l.*, may prevent a thousand acres of land from being flooded. The value of such improvement is, not the whole value of the land reclaimed, but the value of the outlay made by the tenant with a proper reward for any unusual skill he has shown in the works made by him. Similarly, a tenant takes down a fence and reclaims at an expense of 10*l.*, half an acre of land. The tenant is not entitled to the value of the half acre of land reclaimed, but, as before, to the value of the work done by him and not to the value of the soil reclaimed by him.

Turning from general observations to the Bill, the works which constitute improvements are specified in the schedule. No question therefore arises as to what is meant by the expression "improvement," and the Bill itself classifies them under the heading of (1) improvements to which consent of landlord is required—that is to say, permanent improvements; (2) improvements in respect of which notice to the landlord is required—that is to say, durable improvements; and (3) improvements to which the consent of the landlord is not required—that is to say, transitory improvements, or improvements which good farming requires. Probably the list will be augmented, but if the enumeration of improvements is adhered to, no risk can be run by the landlord of having to pay for the process of bringing deteriorated land into a normal state of cultivation, or of paying for high cultivation unless express words including such processes are added to the Bill.

With respect to the measure of the value of the improvement, the Bill provides that it is to be "such sum as fairly represents the value of the improvement to an incoming tenant." The only material question on these words is whether they can possibly include the additional value which accrues from the inherent capabilities of the soil (a) Mr. Butt, in his work on the Land Act, clearly

(a) This difficulty has been removed, see page 17.

holds that the still stronger words of the Irish Land Act, which defines improvements to be "works which, when executed, add to the letting value of the holding," did not include such inherent capabilities. He says (p. 128), "Instances are not uncommon in which the reclamation of bog or land on the edges of moors or lakes has repaid the whole expense of the process in the crops which were raised in the course of it. In instances like these the property is not created by the expenditure of the tenant, but by the latent powers of the soil. Those powers are the property of the landlord, and he has a right to have them returned to him when the tenant's interests expire. He has not a right, in morals or in justice, to appropriate to himself the expenditure which the tenant has incurred in making them productive."

Possibly it may be urged that *e majore cautela* words should be added, excluding the increase of value arising from the inherent capabilities of the soil, and, as far as I can judge, there would be little objection to such an addition.

Considerable argument has been raised as to the meaning of the words "value to an incoming tenant." The words used in the various Acts and Bills are "letting value," "value to an incoming tenant," "value to succeeding occupier," "addition to letting value," "additional value given to holding," and so forth; but in my judgment the exclusion of the increase of value accruing from the inherent capabilities of the soil, in estimating compensation to the tenant, will not depend on the difference between the various terms which are used of "letting value," and so forth, but on the general ground that "increase of value" arising from the inherent capabilities of the soil is not and cannot be an improvement made by the tenant.

The time at which the tenant becomes entitled to obtain compensation for his improvements is declared by the Bill to be on quitting his holding at the determination of his tenancy. The Bill thus requires the concurrence of two events—the quitting the holding and the determination of the tenancy. First, as to the meaning of these terms. A., the tenant of Blackacre, quits his holding, and assigns it to B., but he does not determine his tenancy, and clearly he ought not in such an event to be entitled to compensation, inasmuch as he sells his improvements to the assignee who succeeds to his right to compensation.

On the other hand, the tenancy may determine without the tenant quitting his holding. For example, A., is tenant of Blackacre under a lease for twenty-one years. The lease and consequently

the tenancy determines, but A., instead of quitting his holding, continues as tenant from year to year. Similarly A., being tenant from year to year of Blackacre, agrees with his landlord, B., to take additional land, and makes a new arrangement. The contract of tenancy as respects Blackacre is determined, but A. does not quit his holding. In short, practically, any new arrangement such as usually occasions an increase of rent or a reduction of rent creates a new tenancy, inasmuch as the old contract of tenancy is gone and a new contract accepted.

Even the fact of giving a notice to quit, although it is afterwards cancelled by mutual agreement, is held to determine a tenancy: (See "*Tayleur* v. *Widdin*," L. Rep. 3 Exch. 303.)

Returning then to the question, when ought the tenant's right to obtain compensation to accrue, it would seem obvious that so long as he remains in his holding he cannnot possibly be entitled to be paid for his improvements, inasmuch as the improvements are his own so long as he remains and he is in the full enjoyment of them. For example, A., a tenant from year to year, marls his land in 1884. In 1885 A. makes a new arrangement with his landlord B., which determines the tenancy of Blackacre, the tenant still remaining in possession of it. It would be absurd for B., the landlord, to pay A. in 1885 for the marling of his land, inasmuch as, supposing A. to remain in possession for five years more, he would, according to the general practice of valuers, be entitled to no compensation at all, and therefore must, if paid in 1885 for his marling, in justice repay B. in 1890 the sum received by him with interest. Viewed as a matter of practice, therefore, to make compensation payable to the tenant on a technical determination of the tenancy where the tenant does not quit his holding amounts to an absurdity and to a contradiction of the general course of dealing between man and man.

It is urged, however, that B., the landlord, may raise the rent on the sitting tenant, A., as he is called, and thus virtually deprive him of the value of his improvements, and that this consequence would be averted by making the right to compensation accrue on the determination of the tenancy alone. This argument at first seems plausible, but in reality rests on no foundation whatever, for how would a landlord be prevented from raising his rent by making compensation payable on the determination of the tenancy alone? As has been shown in the preceding page, it is contrary to common sense to imagine that if the tenant elects to stay, notwithstanding the determination of the tenancy, the landlord and tenant would, by force of any enactment whatever, be guilty of the absurdity, the

one of paying and the other of receiving a price which must be repaid, either in fact or by rent, under the circumstances of his staying. They would therefore practically in such a case set aside the words of the statute, and virtually set up the claim of the tenant for improvements against the demand of the landlord for rent. In other words, actual payment would not be thought of, but the right of the tenant to payment would be taken into account. Now, this right the tenant has as completely under the Bill as it stands as he would have under the Bill as supposed to be altered. He has a vested interest in his improvements, and can urge that interest as effectually in the one case as in the other.

Take an example. A. is tenant of Blackacre at a rent of 50*l.*, commencing at Lady Day, 1880, and has made a permanent improvement which we will assume will entitle him when he quits his farm to 100*l.* B., his landlord, at Michaelmas, 1884, informs A. that he intends to increase the rent 10*l.* A. refuses to pay an increased rent; he holds his farm till Lady Day, 1886, without any increase of rent, and then quits by reason of a notice given to him by B. on Lady Day, 1885. If no notice be given, he holds on without payment of the increased rent. On quitting on Lady Day, 1886, he is paid 100*l.* for his improvements. How would he be in any better position if on receiving the demand of an increase of rent he was entitled to claim for his improvements? In such a case it is absurd to suppose that the landlord would pay him 100*l.* down, and yet only increase his rent by 10*l.*, for the effect of that would be to make the landlord practically a loser instead of a gainer by the transaction.

In making the above observations no account has been taken of the technical difficulty of making a right to obtain immediate payment of compensation accrue on a demand for rent, for the effect of such an enactment would be that the tenancy would be determined immediately on the demand being made, and not, as is the law in the case of a tenancy from year to year, by a notice which, in some cases, runs for one year and in others for two years. On the other hand, if it be merely meant that the demand for an increase of rent should entitle the tenant to quit, if he likes, on giving the usual notice to quit, the law remains as it did before.

Again, in urging the advantage to the sitting tenant of making a statutory right to payment accrue on an increase of rent, it is forgotten that permanent improvements can only be made by agreement between the landlord and the tenant. The tenant, therefore, will himself determine the time at which the compensation is to be

paid to him, and will, if he thinks it desirable, have declared that his right to receive the compensation is to accrue on an increase of rent being made. As respects permanent improvements, then, the provision in the Bill requiring the concurrence of the two events, quitting the holding and determination of the tenancy, is immaterial, as that provision may always be set aside by agreement. On the other hand, in the case of improvements, the compensation for which is partly or wholly payable (so to speak) by the enjoyment, to make the compensation payable before the enjoyment ceases would lead only to useless discussions and confusion.

Stated shortly, the case would seem to stand thus—the Bill is both logically and practically correct in making the concurrence of the two events—the quitting the holding and the determination of the tenancy—a condition antecedent to the right to payment of the compensation. On the other hand, if the one event only—the determination of the tenancy—be required, no real injury to the landlord and no real benefit to the tenant will result from the change. The right of the tenant to compensation will be neither greater nor less in the one case than in the other, and, inasmuch as the right, is a vested right, he can always make it, equally a factor in any bargain with his landlord, whether it is or is not payable on the determination alone of the tenancy. Similarly, the landlord will have neither greater nor less hold over the tenant by the concurrence of the events being made a condition of payment, inasmuch as the tenant can at any time, by giving notice, produce the desired concurrence.

CHAPTER IV.

TEXT OF THE ACT WITH EXPLANATION.

46 & 47 VICT. c. 61.

An Act for amending the Law relating to Agricultural Holdings in England.—[*25th August*, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

IMPROVEMENTS.

Compensation for Improvements.

1. *General right of tenant to compensation.*—Subject as in this Act mentioned, where a tenant has made on his holding any improvement comprised in the first schedule hereto, he shall, on and after the commencement of this Act, be entitled on quitting his holding at the determination of a tenancy to obtain from the landlord as compensation under this Act for such improvement such sum as fairly represents the value of the improvement to an incoming tenant: Provided always, that in estimating the value of any improvement in the first schedule hereto there shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil.

The words "tenant," "holding," "landlord," and the phrase "determination of a tenancy," are all defined and explained by sect. 61 of this Act.(a)

"Holding" means any parcel of land (b) held by a tenant.

"Landlord," in relation to a holding, means any person entitled to receive the rents and profits of any holding.

This definition accords very much with the common meaning of the word. It includes landlords who have only life interests in the property, and in many cases trustees, and other persons, who, though they receive the rents, do not receive them for their own benefit. Where, however, trustees and such other persons are landlords, they are not liable *personally* to pay the compensation, but it is obtainable by means of a charge on the land.(c)

In many cases, too, although the landlord is liable, arrangements will be made by which the actual money payment will be made by the incoming tenant.(d)

The commencement of the Act is 1st January, 1884.

It is most important to notice that the tenant has no right of compensation given him by this section for any improvements except the twenty-three mentioned in the first schedule, which are set out at page 2 above;(e) and also that the right to compensation is only given "subject to the provisions of this Act." It will be well therefore now to notice briefly the principal provisions of the Act to which the tenant who desires to make an improvement and claim compensation should pay careful attention; and we shall discuss these provisions in detail subsequently.

A limited right to compensation for *some* improvements made *before* the commencement of the Act is given by sect. 2; but we shall discuss this also subsequently;(f) and now we shall only speak of improvements made *after* the 1st January, 1884.

First. He should see that the improvement which he proposes to make is one of the twenty-three mentioned in the first schedule.(g)

Secondly. He should see that his holding is of such a nature that it comes within the scope of the Act, and that the Act applies to it.(h)

Thirdly. Whether he has a valid claim to compensation, under an agreement or otherwise, independently of this Act, and whether, if

(a) See page 8 above.
(b) *I.e.*, "piece of land."
(c) See sect. 31.
(d) See sect. 56.
(e) See also page 1 above.
(f) See pages 29, 30.
(g) See page 2.
(h) See page 28.

such is the case, such compensation is by sect. 5 (which we set out below) (a) substituted for the compensation under the Act. In considering this it will be often necessary to determine whether his tenancy is "under a contract of tenancy current at the commencement of this Act,"(b) or whether the contract "began after the commencement of this Act;" and he must, if his tenancy is from year to year, remember the very strained, unnatural explanation given in sect. 61(c) with regard to this point.

Fourthly. He must, in case of a First Class improvement, get the proper written consent from the landlord or his authorised agent.(d) If he gets consent from the agent he must take care that the agent has the requisite authority to give consent.

Fifthly. He must, in the case of a Second Class improvement (*i.e.*, drainage), give the proper written *notice* to the landlord or the authorised agent, and then wait and see whether the landlord chooses to do the drainage himself. If the tenant gives the notice to the agent he must see that the agent has the requisite authority to receive the notice. (e)

Sixthly. He must duly and properly execute the improvement.

Seventhly. He is only entitled to compensation on quitting his holding at the determination of a tenancy, except under sect. 41. (f)

Eighthly. Two months at least before the determination of the tenancy he must give a proper written notice to the landlord of his intention to claim, (g) and afterwards in prosecuting his claim he must comply with the provisions of the Act relating to procedure. (h)

We may also add that it will not be sufficient for the tenant to comply with the provisions of the Act, but also he must be prepared, when he makes his claim, to bring forward proper legal evidence that he has so complied with the Act. (i)

But besides these cautions which are applicable to all tenants, tenants who make improvements when they are about to quit, will sometimes be deprived of their compensation by sect. 59. (k)

And tenants of lands belonging to the Crown and the Duchies of Cornwall and Lancaster should notice the provisions of sects. 35-37; (l) while tenants of Church and charity lands should notice the provisions of sects. 38-40. (m)

(a) See page 38.
(b) January 1st, 1884.
(c) See page 8, above.
(d) See sect. 3, page 31.
(e) See sect. 4, page 35.
(f) See page 74.
(g) Sect. 7, page 53.
(h) Sects. 7-28, p. 53, *et seq.*
(i) See below, "Evidence."
(k) See below.
(l) See below.
(m) See below.

Tenants about to quit are very properly deprived of some encouragements to make improvements for which they can make their landlord pay compensation, except such as fall under the head of "manures."(a) The tenants on lands belonging to a Bishopric, Vicarage, &c., will merely require to be a little more careful as to obtaining consent, giving notice, &c.

We will now proceed to consider :—

To what Holdings the Act applies both before and after 1st Jan. 1884.

It does not apply to land in Scotland or Ireland, (b) but it applies to Wales.

It applies to land of every tenure, whether freehold, copyhold, or leasehold.

It applies to land belonging to the Crown, or the Duchy of Lancaster, or the Duchy of Cornwall. For special provisions as to Crown and Duchy lands, see sects. 35-37.

It applies to ecclesiastical and charity lands. For special provisions as to these, see sects. 38-40.

It applies to lands held under colleges and other corporations as well as of individuals; subject to the exceptions mentioned below, it applies to any piece of land held by a tenant under a landlord (c) for a term of years, or for lives, or for lives and years, or from year to year. (d) It applies to beneficial leases as well as to leases at full or rack rent. It only applies to land held "under a landlord" (e) so that the Act will not enable a "tenant for life" under a settlement or will, to claim *as tenant* compensation for improvements made by him against his remainderman or successor in title; nor can an incumbent of an ecclesiastical benefice claim *as tenant* for improvements made by him against the succeeding incumbent. For such a "tenant for life" or incumbent is not a tenant holding under a landlord; but in some cases however he may obtain a charge on the holding for money spent by him and so get wholly or partially repaid.

Nothing in the Act applies "to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural, and as to the residue pastoral, or in whole or in part cultivated as a market garden, or to any holding let to the tenant during his continuance

(a) Nos. (22) and (23) in the list; see sect. 61, page 8, and page 3.
(b) Sect. 64.
(c) See page 8.
(d) See sect. 61.
(e) For definition of "Landlord," see sect. 61, page 8 above.

in any office, appointment, or employment held under the landlord."[a]

It does not therefore apply to houses in towns, or to houses in the country, which are not let with land. It does apparently apply to small holdings of land, as the provision in the Act of 1875 [b] excluding holdings of less than two acres has disappeared. Probably it will not apply to a holding consisting only of a house and ordinary garden.

It does not apply to a holding let to an agent, bailiff, or servant during his continuance in his landlord's employment.

As to Improvements executed before the Commencement of Act.

2. *Restriction as to improvements before Act.*—Compensation under this Act shall not be payable in respect of improvements executed before the commencement of this Act, with the exceptions following, that—

(1.) Where a tenant has within ten years before the commencement of this Act made an improvement mentioned in the third part of the first schedule hereto, and he is not entitled under any contract, or custom, or under the Agricultural Holdings (England) Act, 1875, to compensation in respect of such improvement; or

(2.) Where a tenant has executed an improvement mentioned in the first or second part of the said first schedule within ten years previous to the commence- of this Act, and he is not entitled under any contract, or custom, or under the Agricultural Holdings (England) Act, 1875, to compensation in respect of such improvement, and the landlord within one year after the commencement of this Act declares in writing his consent to the making of such improve-

(a) Sect. 54.

(b) We refer to the Agricultural Holdings Act, 1875 (38 & 39 Vict. c. 92) as "the Act of 1875."

ment, then such tenant on quitting his holding at the determination of a tenancy after the commencement of this Act may claim compensation under this Act in respect of such improvement in the same manner as if this Act had been in force at the time of the execution of such improvement.

The commencement of the Act is January 1st, 1884, and the general rule is that the tenant (a) is not entitled to compensation under the Act in respect of any improvement executed before that date. Of course, although he may be not entitled to claim under the Act, he may (if he can) claim in any other way. The Act does not deprive him of this right. (b)

There are, however, two cases in which he may claim under the Act for improvements executed before 1884:—(1.) Where he has since 31st December, 1873, made a Third Class improvement (c), and he is not entitled under any contract, custom, or the Act of 1875, to any compensation for such improvement.

This is almost tantamount to saying that he will be entitled to compensation under the new Act if he is not otherwise entitled to compensation.

The "contract" is not required *by this Act* to be in writing, but probably it must be a binding legal one, capable of being enforced by the tenant, and hence in some cases it may happen that it will be of no avail unless it is in writing, because of the "Statute of Frauds."

The custom alluded to above means the custom of the country or district. In some districts custom gives compensation for many improvements, but these customs vary very much.

The custom, to be binding, must be the common usage of the neighbourhood, but it need not have existed from time immemorial. Custom applies to leases and agreements, except so far as they are expressly or by implication inconsistent with it.

The person who claims under a custom will have to prove its existence.

For further explanation with regard to custom see Appendix.

All the improvements mentioned in the third part of the first schedule to the present Act (*i.e.*, the Third Class improvements) are also mentioned in the Act of 1875. (d)

(a) Sect. 2.
(b) See sects. 57, 62 (*b*).
(c) See page 3.
(d) We print the Act of 1875 below.

But it must be remembered that the Act of 1875 does not apply to, or has been excluded in, very many tenancies; so that of course no compensation can be claimed under that Act in such tenancies. In such cases (if also there is no legal claim under contract or custom) the tenant can claim compensation under the New Act—if made within the ten years before the year 1884.

(2) The second case where the tenant can claim for improvements executed before 1884, is where he has executed a First or Second Class improvement since December 31st, 1873, and two other circumstances concur, viz., (*a*) that he is not entitled to compensation under contract, custom, or the Act of 1875, (*b*) *and also* that the "landlord" sometime during the year 1884 declares in writing his *consent* to his making the improvement.

We must notice here that the Act is more strict with regard to the First and Second Class improvements than it is with regard to Third Class ones, as we have seen above; also that the consent required is a retrospective one. It is not enough that the landlord assented to, or even gave a written consent to, the making of the improvement before it was made, or has since given his consent to it. Even consent after the passing of the Act (25th August, 1883) will not suffice, if it was given before 1884.

The consent must be of the landlord, and we should advise that it be signed by him. It would not be safe to rely on a consent given by an agent.

The consent in this section applies to drainage and First Class improvements, but it seems not to Third Class ones.

In the case of lands belonging to the Crown, the Duchies of Cornwall and Lancaster, and some ecclesiastical lands, special precautions are necessary with regard to the landlord's consent: (See sects. 35-40, 42, below.)

In other cases any "landlord" may give consent although he is only a limited owner or trustee, &c. (*)

It would seem the landlord may, in giving his consent, make terms as to compensation or impose conditions, just as if the consent was given for an improvement executed after the Act under sect. 3 (see below).

If the above section is read carefully it will be seen that there has been a mistake in the drafting or printing; the paragraph which is numbered (2) ought to have come to an end after the word "improvement," and before the word "then"; for as it stands printed it leaves paragraph (1) without any conclusion or operative part.

(*) See sects. 31, 42, 61.

It is plain therefore that the later portion of paragraph (2) —beginning at the word "then"—really belongs to both paragraphs, and we have explained the section accordingly.

Although the improvement may have been made several years ago the tenant can only, under this section, claim compensation "on quitting his holding at the determination of the tenancy."

As to Improvements executed after the commencement of Act.

3. *Consent of landlord as to improvement in First Schedule, Part I.*—Compensation under this Act shall not be payable in respect of any improvement mentioned in the first part of the first schedule hereto, [a] and executed after the commencement of this Act, [b] unless the landlord, or his agent duly authorised in that behalf, has, previously to the execution of the improvement and after the passing of this Act, consented in writing to the making of such improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation, or otherwise, as may be agreed upon between the landlord and the tenant, and in the event of any agreement being made between the landlord and the tenant, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act.

Compensation under the Act will not be payable in respect of a "First Class" improvement [c] executed after 1883, unless the landlord, or his agent duly authorised in that behalf, has, previously to the execution of the improvement, and after the passing of this Act, [d] consented in writing to such improvement.

Here are several important conditions which must be observed. The consent must be previous; retrospective sanction will not suffice. Also it must be in writing. In case of consent by an agent, it will have to be shewn that the agent was authorised to give such consent. The authority to the agent need not necessarily be given in writing, though it would be convenient so to confer it. And the authority

(a) See pages 2, 3.
(b) Jan. 1, 1884.
(c) For list of these see page 2.
(d) The Act was passed on the 25th August, 1883.

need not be given for each particular farm, or each particular improvement.

It would be enough if the landlord gives him a general authority to give consents to improvements under the Act.

It will not be safe for a tenant to presume that an agent is duly authorised merely because he collects the rents and generally manages the estate.

After a change of landlords of a holding it will not be safe to assume that a tenant has the requisite authority from the new landlord because he was authorised by the old one.

The "consent" forms the foundation of the tenant's claim He should therefore take care to get such a written consent as will clearly show to what improvement the consent is given. For instance, if a tenant has asked, verbally, for consent to his building a new barn and receives reply from his landlord, "I consent to your proposed improvement," it may be impossible to prove to what the consent referred. But if the reply is, "I consent to your proposal to build a new barn in the Home Field of X. Farm, cost not to exceed 200*l.*," no such difficulty will arise. Forms of consent will be found below, see "Forms and Precedents."

In giving consent a landlord may impose terms. Of course, if the tenant does not like the terms, he need not execute his proposed improvement. It will often be very convenient for both parties to agree as to the cost of the work and the amount of compensation, as this will save the expense of valuation and arbitration when the tenant quits. If desired the compensation may be on a sliding scale, so that the longer the tenant remains in the holding, and gets the benefit of his improvement, his compensation on quitting may diminish accordingly.

But whatever conditions are imposed they should be in writing, though the Act does not distinctly say so. Whatever compensation is agreed upon is substituted for compensation under the Act.

Where a landlord is only a limited owner (*e.g.*, tenant for life), or trustee, &c., he can give the necessary consent, or he can make terms, without asking anyone's consent or approval (sect. 42), except in the case of lands belonging to the Bishops and Clergy (sects. 38, 39, 42). And special provisions are made as to lands belonging to the Crown and the Duchies of Cornwall and Lancaster (see sects. 35-37, below).

This wide power of making agreements and imposing conditions is of very great importance, for it enables a limited owner to bind his successors. That is to say, an agreement made in accordance

with this section will bind not only the landlord who makes it, while he continues landlord, but a new landlord many years after, so that the new landlord (and not the old one who made the agreement) will be liable to pay what the old landlord promised.

As a general rule a man can only bind himself and his heirs, executors, and administrators, by his covenants and agreements, and, sometimes, when they run with the land, his assigns, but by an agreement made under the above section he will bind the persons who succeed him as landlords. (a) The same rule applies to many other agreements made under this Act.

And this makes it all the more necessary to see that the provisions of the Act in getting consents and entering into agreements or accepting terms are strictly followed, as, although the landlord who entered into an informal arrangement might feel bound in honour, even if it was not binding in law, yet a new landlord might not take the same view.

When we say the agreement will be binding on the successor, so that the tenant can claim against him under its provisions, we mean if it is one made *bonâ fide* and honestly on the part of the tenant.

If the landlord and tenant "colluded" to cheat the incomer, of course it would not be binding on the successor. It is true the landlord is not by the Act definitely constituted a trustee for the successor, but at the same time it is plain that he is to some extent in that capacity; it will therefore be his duty in making agreements to have some regard to his successor's interests, and in case of an agreement grossly unfair to the successor, it is probable that the court would interfere, possibly if the tenant was also to blame, by rejecting or altering the agreement or modifying its effect, otherwise by making the landlord who had entered into it (or his representatives if he were dead) liable in damages to the successor.

It would not be safe for a tenant to give his landlord (if the landlord is a limited owner or trustee) a *bonus*, or lump sum down, for his consent, to put in his own pocket; but an increase of rent, if the tenant is willing to give it, would not be open to the same objection. Probably an agreement that the tenant's compensation should accrue due if his rent was raised would be valid, and such an agreement would be valuable to the "sitting tenant." (b)

If the subject-matter of the agreement is of the value of 5*l.* or more, a 6*d.* stamp will be required. (c)

(a) See Appendix "Covenants." When landlord is only a leaseholder, see limit in sect. 42.

(b) See page 23.

(c) Stamp Act, 1870, 33 & 34 Vict. c. 93.

The section does not say that the *agent* may make agreements, though he may (if authorised) give consents; so that the tenant should have any agreement signed by the landlord himself.

4. *Notice to landlord as to improvement in first schedule, Part II.*—Compensation under this Act shall not be payable in respect of any improvement mentioned in the second part of the first schedule hereto, and executed after the commencement of this Act, unless the tenant has, not more than three months and not less than two months before beginning to execute such improvement, given to the landlord, or his agent duly authorised in that behalf, notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work, and upon such notice being given, the landlord and tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed, and in the event of any such agreement being made, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act, or the landlord may, unless the notice of the tenant is previously withdrawn, undertake to execute the improvement himself, and may execute the same in any reasonable and proper manner which he thinks fit, and charge the tenant with a sum not exceeding five pounds per centum per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum payable for a period of twenty-five years as will repay such outlay in the said period, with interest at the rate of three per centum per annum, such annual sum to be recoverable as rent. In default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time, the tenant may execute the improvement himself, and shall in respect thereof be entitled to compensation under this Act.

The landlord and tenant may, if they think fit, dispense with any notice under this section, and come to an agreement in a lease or otherwise between themselves in the same manner and of the same validity as if such notice had been given.

For definition of landlord see sect. 61; and page 8 above. Compensation under the Act will not be payable in respect of drainage executed after Jan. 1st, 1884, unless the tenant has, not more than three months (a), and not less than two months, before beginning his draining given to the landlord, or the landlord's agent duly authorised in that behalf, notice (b) in writing of his intention so to do, "and of the manner in which he proposes to do the intended work."

The notice must be in writing, and it must not only state that the tenant intends to drain, but must particularise the manner in which he proposes to do it. The notice will in many cases form the foundation of the tenant's claim to compensation, it should therefore clearly state also what fields he proposes to drain.

In case the tenant desires to give notice to the agent he must see that the agent is authorised to receive such notices. Compare what is said above with regard to "consent" given by an agent.

Three different results may follow the giving of the notice:—

(*a*) Upon such notice being given, the landlord and tenant may "agree" on the terms as to compensation or otherwise on which the drainage is to be done. It will be proper that any such agreement should be in writing, although the Act does not say so. The Act does not say that the landlord's agent and the tenant may agree, so it will be best that the agreement should be signed by the landlord himself. As to agreements between landlord and tenant, compare remarks above, page 34. If the subject-matter of the agreement is of value 5*l.* or more, a 6*d.* stamp will be required.

(*b*) The landlord may (unless the tenant previously withdraws his notice) undertake to do the drainage himself, and charge the tenant 5 per cent. on the outlay, or charge him an annual sum so as to repay the outlay with interest at 3 per cent. in twenty-five years. It seems he will not be bound to drain exactly in the "manner" proposed by the tenant, but may do it in any reasonable and proper manner.

It should be observed that the annual sum is recoverable "as rent,"

(a) *i.e.* calendar months. (b) For service, see sect. 28.

so that it could be distrained for when in arrear; but there is no such provision if the landlord chooses to take the 5 per cent. interest. He could, however, recover it from the tenant by ordinary legal process.

(*c*) If, however, the landlord and tenant do not come to any agreement, and if moreover the landlord does not undertake the drainage, then the tenant may (after waiting till the expiration of the two months mentioned in his notice of intention to drain) execute the drainage himself, and will be entitled to compensation under the Act.

If the landlord does undertake to drain and fails to do it "within a reasonable time," the tenant may do it, and will be entitled to compensation.

The Act gives no clue to enable us to say what is and what is not "a reasonable time"; so that a tenant's best plan, is, if his landlord undertakes to drain and then neglects to do it, is to try and get him absolutely to withdraw his undertaking, and then (supposing of course the time mentioned in his notice of his intention to drain has also expired) the tenant can safely do the drainage himself.

The last clause of sect. 4 enables the landlord and tenant to dispense with any notice.

This will be convenient when landlord and tenant are both anxious that the tenant shall commence draining at once and not wait until between two or three months have expired.

It will also often be convenient in a lease to make provisions for compensation, and dispense with notice if the tenant should think it advisable to drain; but, if it is proposed to insert any such provisions in the lease, the tenant should see whether the persons making the lease come within the definition of "landlord" given in this Act. (*a*) Sometimes people have power to make leases although they are not in any way entitled to receive the rents and profits either for their own benefit or for that of anyone else.

But, in consequence of the wording of sect. 29, where the landlord intends to do the drainage himself and charge the compensation on the holding, it will be safest to insist on the proper notice being given, though probably this precaution is not really necessary.

Cases under section 5 where Compensation is payable under Agreement, Custom, or the Act of 1875. (b)

Sect. 5. is as follows:—

(a) Sect. 61. (b) This head-line is *not* in the Act.

5. *Reservation as to existing and future contracts of tenancy.*—Where, in the case of a tenancy under a contract of tenancy current at the commencement of this Act, any agreement in writing or custom, or the Agricultural Holdings (England) Act, 1875, provides specific compensation for any improvement comprised in the first schedule hereto, compensation in respect of such improvement, although executed after the commencement of this Act, shall be payable in pursuance of such agreement, custom, or Act of Parliament, and shall be deemed to be substituted for compensation under this Act.

Where, in the case of a tenancy under a contract of tenancy beginning after the commencement of this Act, any particular agreement in writing secures to the tenant for any improvement mentioned in the third part of the first schedule hereto, and executed after the commencement of this Act, fair and reasonable compensation, having regard to the circumstances existing at the time of making such agreement, then in such case the compensation in respect of such improvement shall be payable in pursuance of the particular agreement, and shall be deemed to be substituted for compensation under this Act.

The last preceding provision of this section relating to a particular agreement shall apply in the case of a tenancy under a contract of tenancy current at the commencement of this Act in respect of an improvement mentioned in the third part of the first schedule hereto, specific compensation for which is not provided by any agreement in writing, or custom, or the Agricultural Holdings Act, 1875.

It will be seen that this section is divided into three distinct paragraphs, we shall here distinguish them by the numbers (1), (2), (3), though they are not distinguished in the Act, except by breaks in the print. (1) and (3) relate to tenancies under contracts current at the commencement of the Act, and (2) relates to tenancies

under contracts beginning after that date, in the first instance, but is also applied by (3) to the earlier tenancies.

It is needful carefully to distinguish these two classes of tenancies.

The commencement of the Act is January 1st, 1884, so that, except in the case mentioned below, a tenancy under a contract of tenancy current at the commencement of the Act means a tenancy under a contract of tenancy current on January 1st, 1884.

This, for the sake of brevity, we shall call a "current tenancy." But the Act makes a special provision with regard to a tenancy from year to year. (*) Of course such tenancies are very common in all parts of England, and indeed in some districts must be almost universal; although they are nominally only yearly tenancies they may, and most frequently do, run on for many years.

Now, although the Act applies to tenancies, whether they were current at the time of the Act coming into force or not, yet all its provisions do not fully apply to current tenancies; hence it was the object of the framers of the Act to make the yearly tenancies cease to be "current tenancies," as far as the purposes of this Act are concerned, as soon as possible.

So in the interpretation section they inserted the following clause, which, however, is really a piece of definite legislation, and not merely a matter of interpretation:—

> "A tenancy from year to year under a contract of tenancy current at the commencement of the Act shall for the purposes of this Act be deemed to continue to be a tenancy under a contract of tenancy current at the commencement of this Act until the first day on which either the landlord or tenant of such tenancy could, the one by giving notice to the other immediately after the commencement of this Act, cause such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act."

This will be clearer if we take examples: Suppose a yearly tenancy where one year's notice to quit given on Lady-day is required. In such case the tenancy will (for the purposes of the Act) cease to be a "current tenancy" on Lady-day, 1885.

If in a yearly tenancy where one year's notice to quit given on Michaelmas-day is required, the tenancy will (for the purposes of the Act) cease to be a "current tenancy" on Michaelmas-day, 1885.

(*) See sect. 61, page 8, above.

If in a yearly tenancy a *half-year's* notice to quit given on Lady-day is required, the tenancy will (for the purposes of the Act) cease to be a "current tenancy" at Michaelmas, 1884.

If in a yearly tenancy a half-year's notice to quit given on Michaelmas-day is required, the tenancy will (for the purposes of the Act) cease to be "a current tenancy" on Lady-day, 1885.

In all these cases the tenancy will only cease to be a current tenancy *for the purposes of the Act.* This provision will not make it a future tenancy for any other purposes. Hereafter, for convenience, we shall speak of all tenancies which are not for the purposes of the Act "current tenancies" by the term "future tenancies."

In deciding whether a year's notice or a half-year's notice to quit is necessary, the provisions of sect. 33 of the present Act and of sect. 51 of the old Agricultural Holdings Act, 1875, should not be forgotten, for in some cases they make a year's notice to quit needful, where previously a half-year's notice would have sufficed. We shall set out and discuss sect. 33 below.

Having now ascertained what is a "current" tenancy and what is a "future" tenancy, we can proceed to investigate the effects of sect. 5.

By sect. 5 (1), in the case of a "current" tenancy, compensation will be excluded if *specific compensation* is provided in any one of three ways, viz.:

No. 1. Agreement in writing. (a)

No. 2. Custom.

No. 3. The Agricultural Holdings Act, 1875.

Observe the substituted compensation must be *specific* for the improvement; it will not be enough to allege vaguely that the rent was low, and it was expected that the tenant would improve. Probably it would not be sufficient even if the agreement or lease under which the tenancy was created expressly stated that a lower rent was charged because the tenant agreed to do the improvement, though perhaps this circumstance might be taken into account in estimating the amount of compensation ultimately payable. (b)

The compensation must be "specific," but it is not stated that it must be "fair and reasonable." Probably, therefore, any specific

(a) This need not necessarily be the agreement by which the tenancy was created. This section does not, however, expressly empower landlord and tenant to make agreements, as sects 3 and 4 do in cases falling within them, but clearly they can do so. See sect. 42.

(b) See sect. 6, page 48.

compensation would suffice, however small, except perhaps, if it were so small that it was obviously illusory, and clearly intended to deprive the tenant of any real compensation, the courts might find their way to declare that there was no specific compensation.

As to "custom" see above, page 30, and in the Appendix.

The Agricultural Holdings Act, 1875, does (under certain circumstances and in certain cases) give compensation for all the improvements comprised in the first schedule to the Act of 1883, *except* for the formation of silos, embankments and sluices against floods, and the planting of fruit bushes.

These improvements were not recognised by the Act of 1875, and are interesting as illustrating changing conditions in agriculture.

Both silos and embankments are to protect the crops and lands against the effects of varying weather, while perhaps "fruit bushes" are added because the new Act protects market gardens which the Act of 1875 neglected.

It should be noticed that, although the Act of 1875 gives compensation for most of the improvements the new Act does, it arranges them in different classes, and it also gives some rules for calculating the *amount* of compensation which are not contained in the new Act.

When, therefore, compensation is payable under the Act of 1875, the reader should refer to that Act, which we print below. But it must be remembered that in very many tenancies the Act of 1875 does not apply, or has been excluded; so that of course no compensation can be claimed under that Act, even though the improvement is mentioned in it. In such case the present writer is of opinion that the new Act applies, and that compensation can accordingly be claimed under the Act of 1883.

The second clause of sect. 5 relates only to what we have called "future tenancies." [a]

It enables landlord and tenant, by a "particular agreement in writing," to substitute a "fair and reasonable" compensation for the compensation given by the Act for any third-class [b] improvement.

The agreement must be written, and if the compensation it gives is not "fair and reasonable," it will not avail, and the tenant will be able (notwithstanding his agreement) to claim compensation [c] as

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[a] See pages 39, 40.

[b] See page 3.

[c] In our notes to sect. 55 we discuss whether the referees are bound to treat all agreements as valid until set aside. See also sect. 55.

though it had never been made. It will not be sufficient that the tenant, in signing the agreement or any lease, signs a statement that it is "fair and reasonable." But it will have to be shown, in case of dispute, that it is fair and reasonable to the satisfaction of the court, person, or persons, who have ultimately to try the question of the validity of the agreement.

The words "having regard to the circumstances, &c.," seem to have been inserted with the object of allowing some latitude in decision. Perhaps lowness of rent may be taken into account, but this seems very doubtful.

It will be seen that the provision for "future tenancies" is more favourable to the tenant than that relating to "current tenancies." In the case of "current tenancies" only *specific* compensation is required; at least, if provided in agreement made before Jan. 1, 1883. See notes to Form below.

The provision in sect. 5 (2) enabling landlord and tenant partailly to contract themselves out of the Act does not apply to First or Second Class improvements. The reason of this is, that the landlord need not give consent to any First Class improvement, and that he can prevent the tenant doing drainage by doing it himself.

The third clause of sect. 5 relates to "current tenancies," and applies sect. 5 (2) to them in respect of Third Class improvements for which *specific* compensation is not provided by written agreement, custom, or the Act of 1875.

The Act of 1875 *does* provide specific compensation for all the Third Class improvements; but in a large number of cases the Act has been excluded, or its provisions do not apply, so that no compensation can be claimed under that Act.

Hence, where no claim can be made under written agreement, custom, or the Act of 1875, the tenant would in a current tenancy be able to claim under the new Act by force of sect. 5 (1); but this last clause sect. 5 (3) enables the landlord and tenant in a current tenancy, by agreement in writing, to substitute "a fair and reasonable compensation," instead of the compensation given by the Act for any "Third Class improvement."

The Execution of the Work.

Of course the improvements should be properly executed, else their value and the consequent compensation will be proportionately diminished. In case any agreement with the landlord has been made, the work must be done in accordance with it, and the terms of the agreement complied with.

If, however, there has been no agreement, then the tenant will, in executing a First Class improvement, be bound by the terms of his own application as varied by the landlord's written consent.

For instance, if the tenant writes:

"I ask your consent to my building a stable," and the landlord replies:

"I give my consent to your building a stable—but it must contain at least five stalls and must have a slated roof:"

In such case the tenant must be careful to make five stalls and have a slated roof. If he put only four stalls or make a thatched roof he would very possibly lose all compensation, and this might be the case even though the landlord had subsequently expressed verbally his satisfaction with the work. In the same way, in case of drainage, the tenant will be bound by his own notice where there has been no agreement.

Curiously enough, there is no express power given in the Act to enable a landlord who has made an agreement for compensation under sects. 3, 4, 5, to vary such an agreement; (a) it would therefore not be safe for a tenant who has partly completed an improvement to complete it in a different manner from that which had been agreed upon, although he may have his landlord's written consent to the proposed variation.

If, however, the landlord is absolute owner, he may be willing to consent to sign a proper document agreeing (b) that the tenant shall have the proper compensation notwithstanding the variation, and in such circumstances the tenant would be safe.

The two preceding paragraphs apply similarly to the case of a First-Class improvement begun in accordance with the landlord's "consent" and drainage commenced under the tenant's "notice."

The safe plan is to complete the work according to the original arrangement. If, however, the work is begun and it is found impracticable so to complete it, the next best plan is for the tenant to make written application to the landlord stating his desire to make the variation, and then a proper written agreement should be drawn up and the landlord's signature obtained.

The Act does not say that an agreement to execute improvements may be abandoned and cancelled by the mutual consent of the landlord who made it and the tenant; but it is presumed that it may be so abandoned and cancelled.

(a) See, however, sect. 42.

(b) Unless there is a consideration, this should be by deed.

It seems clear that a tenant is not bound to execute an improvement merely because he obtains a "consent" or gives a "notice of his intention;" but it should be remembered that an agreement may be made by letters without any formal document.

The Time when the Tenant is entitled to Compensation.

This is laid down by sect. 1, to be "when he quits his holding at the determination of a tenancy." Both these circumstances, "the quitting of his holding" and "the determination of the tenancy," must concur. The "determination of tenancy" means the cesser (a) of a contract of tenancy by reason of effluxion of time or from any other cause;" (b) hence it includes the termination of a tenancy by reason of a provision in a lease determining it for breach of covenant, &c., or its termination by surrender, forfeiture, &c.

Where a tenant remains in his holding he will not be able to claim compensation merely because his tenancy determines. For instance, if a tenant from year to year accepts a lease, or if his landlord raises his rent, his old tenancy will cease and a new tenancy will begin, but he cannot at that time claim compensation, because he does not "quit the holding." We say *at that time*, because he will not by entering into a fresh agreement of tenancy necessarily lose his rights to compensation finally. On the termination of his final contract of tenancy, when he really does quit the holding, he may be able to claim compensation, (c) but of course by reason of lapse of time in many cases the improvement will have become exhausted, and therefore valueless to an incoming tenant, and so no compensation will be payable. (d)

This case of the "sitting tenant" is discussed at some length in the Government Memorandum printed above (e), and the refusal of the Government to make provision for him is there defended.

Of course he will have the benefit of his improvement as long as he stays, and he will obtain compensation (unless the improvement is exhausted) when he leaves, but his grievance is, that meanwhile his rent may be raised, and he may have to pay rent on his own improvements, for, although no doubt he may leave and then get compensation, he may prefer to stop even if his rent is raised. It will therefore be by far the best plan for a farmer who is only a

(a) *i.e.*, "ceasing."
(b) Sect. 61, which also defines what is "a contract of tenancy." See pages 7, 8.
(c) See sect. 58.
(d) See sect. 1, page 25.
(e) Chapter III., pages 21-24.

yearly tenant, or holds under a short lease, if he intends to make, and before he does make, a First Class improvement, or to drain, to get from his landlord an agreement under sect. 3 or sect. 4, with a condition that the tenant's right to compensation shall accrue due if his rent is raised.

The question is not so important as regards Third Class improvements (a), as they will, in general, be soon exhausted, so that the tenant will be able to reap their full benefit before his tenancy determines and he wishes to begin another tenancy on the same farm. And this is fortunate, because it is not *quite* clear that a landlord who is not an absolute owner can in an agreement under sect. 5 (b) bind his successor to pay compensation at any time other than the period mentioned by sect. 1, viz., on his quitting his holding, &c. Sect. 5 only speaks of an agreement giving "specific" or "fair and reasonable" compensation; and no doubt empowers the landlord to make an agreement as to the *amount* of the compensation, but it does not, like sects. 3 and 4 (c), expressly empower the landlord and tenant to agree upon "terms as to compensation and otherwise." (d)

The Amount of Compensation.

Next to the right of compensation, the most important point is the *quantum* or amount. In many cases with regard to all the three classes of improvements, this will be settled by agreements made between landlord and tenant before the improvements are executed.(e)

In other cases the rule and measure for compensation is laid down by sect. 1 to be "such sum as fairly represents the value of the improvement to an incoming tenant: Provided always, that in estimating the value of any improvement in the first schedule hereto there shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil."

It will be observed that the wording is "an," not "the," incoming "tenant." For possibly the landlord may be taking the land into his own hands, so that there really may be, in this instance, no incoming tenant. Yet the landlord will have to pay compensation just the same as if he were re-letting the farm. Also, it may be

(a) Page 3.
(b) Page 38.
(c) Pages 32, 35.
(d) See, however, sects. 17, 42.
(e) Sects. 4, 5, 6.

that, owing to some special circumstances of the incoming tenant, the improvement may have some special extra worth to him more than to an ordinary incoming tenant. On the other hand, from special circumstances of the incoming tenant, the value of the improvement to him may be diminished. Nevertheless, in estimating the amount of compensation under the Act, the special circumstances of the particular person who happens to be the incoming tenant must be disregarded. The only question will be, what is the value to an ordinary average incoming tenant.

The Act does not limit the compensation which may be obtained to the outlay made by the outgoing tenant. If he has made a very judicious improvement he may obtain as "compensation" even a larger sum than he expended, although he may himself have enjoyed the improvement for some years.

And so, if he expends a considerable sum of money in attempting to make an "improvement" which turns out to be no improvement at all, he will get no compensation. And this will be the case even if he has had the consent of the landlord to the making of such so-called "improvement."

The improvement must be a betterment of the holding in a pecuniary sense. It must make it worth more to a tenant. (a)

And in estimating the value of the improvement "there shall not be taken into account, as part of the improvement made by the tenant, what is justly due to the inherent capabilities of the soil."

That is, the fruits of the inherent capabilities of the soil belong to the landlord, not to the tenant, and are not to be reckoned in the tenant's favour.

These words were not in the original Bill, but were inserted during its passage through Parliament. The object of them seems to be to prevent a tenant from obtaining a large compensation for some small outlay which has resulted in a valuable improvement by reason of some special capability of that particular farm or land. We say *special* capability, because no improvements could be made if the land had not some inherent capability for the improvement. It may assist the reader to understand the objects of this provision better if he turns to the Government Memorandum. (b)

The Act does not say whether the supposed incoming tenant, with regard to whom we are to estimate the value of the improvement, is to be a yearly tenant or a lessee for a long term of years, nor does

(a) Compare the Memorandum. Chapter III., page 19.
(b) Chapter III., page 20.

it suggest that the value is to be estimated from the extra rent which he might be supposed to be willing to pay in consequence of the improvement. Perhaps this may lead to the conclusion that the value of the improvement must be estimated on the supposition that the incoming tenant could be able when he left to sell it to the next tenant, and so that each succeeding tenant might transmit it to his successor. (a) Even if this be so, it is not quite the same as if the Act declared the measure of value to be the increase in the fee simple or selling value of the holding, because a tenant buying an improvement would naturally expect a better return for his money than a purchaser of land, and would therefore give a less price for the improvement. Although new buildings put upon a farm may increase the selling value of the farm by 500*l.*, it by no means follows that an incoming tenant would give 500*l.* down for them, even though he might sell them when he left the farm. In estimating the value of the improvement it will usually be convenient to consider how long time will elapse before it will become exhausted or worthless.

In the case of buildings, the liability to decay and cost of repair must not be forgotten. Sometimes it may assist the valuer to consider how much extra rent an incoming tenant would give in consequence of the improvement, supposing him to remain permanently, or until the improvement should be exhausted. But in most cases this supposed extra rent would diminish each year, so that this must be taken into account.

Although the cost of the improvement is not a true criterion of its value, yet it may be useful for the valuer to consider the prime cost, and what it would cost the incoming tenant if he had to make a similar improvement. It is, however, impossible to say definitely by what rules the valuation must be made until some cases have been decided by the courts. The valuers will have to do their best, working rather in the dark.

With regard to drainage, we may call attention to the remarks in the Memorandum. (b)

And as to improvements of the First and Second Class, it may be convenient to notice the plan of estimating value which was adopted in the Act of 1875, sects. 5-8. (c) It will be observed that the old Act fixed a definite period when an improvement was for the purposes of the Act to be deemed exhausted—twenty years for a First

(a) Compare sect. 56. (b) Page 19.
(c) See Appendix, below.

Class, [a] seven years for a Second Class, and two years for a Third Class improvement. Of course when a tenant built a house, &c., the improvement would not really be exhausted in twenty years. The new Act imposes no such limit.

The amount of compensation estimated in accordance with sect. 1 [b] may be reduced or augmented by the following :—

Regulations as to Compensation for Improvements.

6. *Regulations as to compensation for improvements.*—In the ascertainment of the amount of the compensation under this Act payable to the tenant in respect of any improvement there shall be taken into account in reduction thereof :

(*a.*) Any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; and

(*b.*) In the case of compensation for manures the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, except as far as a proper return of manure to the holding has been made in respect of such produce so sold off or removed therefrom ; and

(*c.*) Any sums due to the landlord in respect of rent or in respect of any waste committed or permitted by the tenant, or in respect of any breach of covenant or other agreement connected with the contract of

[a] The improvements are differently classified in the Act of 1833, so that the Second Class improvements of 1875 are all Third Class in the 1883 Act; while drainage, which was First Class in 1875, is now Second Class. "Marling," which was Second Class in the Act of 1875, and which the Government Memorandum considered durable or Second Class (see page 18), is made Third Class. Of course every reduction of class is an advantage to the tenant.

[b] Pages 25, 45-47.

tenancy committed by the tenant, also any taxes, rates, and tithe rentcharge due or becoming due in respect of the holding to which the tenant is liable as between him and the landlord.

There shall be taken into account in augmentation of the tenant's compensation—

(*d.*) Any sum due to the tenant for compensation in respect of a breach of covenant or other agreement connected with a contract of tenancy and committed by the landlord.

Nothing in this section shall enable a landlord to obtain under this Act compensation in respect of waste by the tenant or of breach by the tenant committed or permitted in relation to a matter of husbandry more than four years before the determination of the tenancy.

This section applies to improvements made both before and after 1st January, 1884, and both to current and future tenancies. From sect. 19 (*a*) it would seem that the proper mode of making an award is to particularise the things in respect of which the compensation is to be reduced or augmented.

With regard to sub-sect. (*a*), it must be noticed that *probably* "the landlord" would mean any previous landlord as well as the person who was landlord at the time of the tenant's quitting. The word "benefit" is remarkably wide—it may be reduction of rent, payment of a sum of money, granting of a lease, supply of bricks, drain pipes, or timber, &c., by the landlord. It is submitted that the benefit may even be a negative one, as where a landlord in consideration of the tenant's making an improvement does not raise the rent, and that here forbearance to raise the rent would constitute a "benefit." (*) It is not necessary that there should be any written agreement, or even a verbal one, or any "understanding," between the landlord and tenant, that the landlord would give or allow the benefit if the tenant would make the improvement. And the benefit may be given or allowed either before or after the improvement was executed. Nor is it needful that the tenant should ever have

(*) Probably this will be the subject of judicial decision.

recognised the fact that the benefit was given or allowed because of the improvement.

It is probable that in many cases where there is no "agreement" of such a character as to entitle the landlord to exclude the tenant from claiming compensation under sect. 1, yet by means of sect. 6 (*a*) he will be able to reduce the claim.

But for the landlord to obtain a reduction of the tenant's compensation under this sub-section he must show, not only that the benefit was given or allowed, but that it was definitely so given or allowed in consequence of the tenant making the improvement. And the burden of proof will be upon the landlord, *i.e.*, he will have to prove it.

There is no doubt that this sub-section will give rise to much dispute. We should advise that, in future, when any "benefit" is given or allowed in consideration of improvements, either that an agreement with regard to the improvements be drawn up, or that at least the landlord and tenant should sign a memorandum [a] stating that the former gives the benefit in consideration; and it certainly would save much discussion, if, where any such "benefit" has already been given and no written agreement made, a similar memorandum were drawn up and signed.

Sub-sect. (*b*) enables the landlord, when the tenant claims compensation for "manures," to claim a set-off for the value of any hay, straw, &c., sold off or removed from the holding within the last two years, &c., *except* so far as a proper return of manure has been made to the holding.

"Manures" is defined to mean [b]:—

"Application to land of purchased artificial or other purchased manure," and also "Consumption on the holding by cattle, sheep, or pigs, of cake or other feeding stuff not produced on the holding."

The landlord cannot (under this sub-section) [c] claim any set off for hay, &c., sold off, unless the tenant claims for "manures;" so he cannot set it off if the tenant only claims for some improvements other than "manures." Also, he cannot claim unless the hay, &c., is sold *off* or *removed*, so that no claim arises if it is sold to the incoming tenant to be used on the farm.

Apparently the landlord can claim if the tenant removes the hay, &c., from the holding for use on some other farm, although it is not

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[a] See form below.

[b] Sect. 61, page 8; and see page 3.

[c] In some cases he might claim under sub-sect. (*c*).

sold. Tenants should notice this, for when a tenant holds two farms, especially if they are under the same landlord, it is very natural to take the feeding stuffs to whichever farm the cattle are on, irrespective of where the hay, &c., is produced.

The restriction that the landlord may not claim for hay, &c., removed more than two years before the end of the tenancy may be compared with the old rule [a] under the Act of 1875, that "Third Class" improvements were to be deemed exhausted at the end of two years.

The landlord's set-off for hay, &c., sold off, may be reduced or altogether destroyed by the tenant's proving that he has caused a proper return of "manure" to be made to the holding. It should be observed that the word "manure," not "manures," is here employed, and it is presumed that it must be construed in its literal sense, and that it does not bear the special meaning which the Act gives to "manures." [b] And it does not seem to be restricted to "artificial" manure.

Sub-sect. (*c*) enables the landlord, against a claim by the tenant for any improvements, to set off "sums due" for rent, waste, breach of covenant, &c., taxes, rates, tithe rent-charge, &c.

There are two kinds of waste, voluntary and permissive, and in respect of both of these the landlord may claim. "Waste" may be defined as the spoil or destruction of houses, buildings, gardens, or trees, it includes any lasting damage to the freehold, digging clay, and carrying away the soil, opening *fresh* mines or *fresh* gravel pits, turning gardens or hop grounds into fields, and in some cases, converting arable land into pasture or pasture into arable. It is usually waste to greatly alter the nature of the property. Working old mines or gravel pits is not usually waste. It is waste to cut down timber trees, or fruit trees, but it is not waste to cut down underwood or trees that are not timber either by the common law or local custom. Oak, ash, and elm of twenty years growth are always timber, and in some districts beech, cherry, chesnut, and walnut are timber also.

It is not waste to cut down timber for repair of the house, buildings, fences, &c. [c]

These rules as to waste are part of the general law, and apply where there is no agreement to the contrary. But usually, where

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[a] There is no such rule under the Act of 1883.

[b] See pages 8, 3.

[c] For further information as to "waste," see Appendix below.

there is a written lease or agreement far more stringent laws are imposed upon the tenant by means of "covenants;" so that often things which are not accounted waste are forbidden by the "covenants." A covenant in its strict sense means "an agreement made by deed."(a) But in the above sub-section the word "agreement" is also used, so that it applies to documents which are not under seal as well as to deeds.

It is not essential that the covenant or agreement should be contained in the deed or document under which the tenant holds his farm; it may be in some agreement made under the previous sections of this Act, or in any agreement connected with the tenancy. The landlord cannot under this sub-section set off any claim unconnected with the tenancy, *e.g.*, an ordinary debt for money borrowed from the landlord, even though it be secured by a covenant by the tenant which the tenant has broken. Nor can the landlord set off any rent, rates, &c., due in respect of any other holding. It should be noticed that only rent which is *due* can be claimed, but a claim for taxes, &c., which are becoming due can be made.

The sub-section only says that "sums due" are to be set off. It is clear therefore that where the landlord has brought his action, and a definite sum has been awarded to him as damages for waste, breach of covenant, &c., such definite sum must be deducted accordingly. But it does not state expressly whether, where no action has been brought and no definite sum due has been ascertained, the landlord can bring before the referees (b) a complaint of waste, breach of covenant, &c., and they can inquire into the matter and decide how much is due to the landlord. The last words of the section, however, relating to a landlord's claim for compensation (c), and the second clause of sect. 7, certainly seem to indicate that the referees may assess (d) the damages occasioned by waste, breach of covenant, &c., and that such damages will then be the sums due; and we take this view of the section. If, unfortunately, it should be held that merely liquidated sums can be taken into account, such a narrow construction will create great unfairness and cause a multiplicity of actions.

By sub-sect. (*d*) the tenant's compensation may be augmented. Many of the remarks made on the previous sub-section with respect to "sums due" and "covenant" apply here also. *Probably* "the

(a) *i.e.*, under seal.
(b) See sects. 7-28.
(c) Page 49, line 11.
(d) See also sect. 19 (*a*).

landlord" includes a previous landlord as well as the person who is landlord when the claim is made. (a)

The last paragraph in the section imposes a limitation of four years on a landlord's claims as to waste and certain breaches of covenant. Matters of husbandry include cultivation, and the mode of cultivation.

Covenants to cultivate on the Four Course system, not to grow a white crop two years running, &c., would be matters of husbandry.

This limit of four years only affects some claims by the landlord. It does not take away any right the landlord might have to bring an action (b) with regard to any claim; it merely prevents him from obtaining compensation *under this Act*. And it does not apply to any claims made by the tenant.

"Determination of the tenancy" is explained by sect 61. (c)

We have now discussed the right to compensation and the mode of estimating the amount, and have considered the time at which the right accrues. The Act now proceeds to lay down the rules of procedure, which must be followed when the tenant seeks to obtain compensation under the Act.

Procedure.

7. *Notice of intended claim.*—A tenant claiming compensation under this Act shall, two months at least before the determination of the tenancy, give notice in writing to the landlord of his intention to make such claim.

Where a tenant gives such notice, the landlord may, before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim in respect of any waste or any breach of covenant or other agreement.

Every such notice and counter-notice shall state, as far as reasonably may be, the particulars and amount of the intended claim.

Many of the sections relating to procedure have been retained from the Agricultural Holdings Act, 1875. (d)

(a) See page 49.
(b) See sect. 60.
(c) See page 8.
(d) See Appendix.

The phrase "compensation *under* this Act" generally signifies compensation estimated in accordance with sect. 1; (a) but, when parties agree on compensation under sects. 3-5, it is substituted for compensation under the Act, and by sect. 17 will, *so far as can be done consistently with the agreement*, be ascertained and awarded in the same manner as if it were compensation under the Act. Hence, when a tenant is about to claim under an agreement, he should be careful to take all the steps in procedure here stated, except where the agreement otherwise provides.

Sometimes, no doubt, by agreement, compensation will be payable to the sitting tenant; we are, however, not now discussing procedure in cases which arise under special agreements, but only those which are strictly under the Act.

Under the Act, then, the tenants' right to compensation only arises when he quits his holding on the determination of his tenancy. (b) Determination of tenancy is explained by sect. 61 (c) to mean "the cesser of a contract of tenancy by reason of effluxion of time or from any other cause."

But the above section requires that two months before the determination of the tenancy the notice of claim should be given. This requirement presents no difficulty when the tenancy, whether a yearly one or for a number of years, comes to an end merely by expiration of time—that is, where it dies a natural death. But where it comes to an end suddenly in consequence of a forfeiture, breach of covenant, &c., it does not seem possible that this requirement can be complied with. (d)

The same difficulty occurs in the case of a lease for lives, as it is impossible for the tenant to tell when the "last life" will drop. "Nothing is more certain than death, while nothing is more uncertain than the time of death."

If a literal compliance with the terms of this section is in all cases essential, a tenant will always run the risk of losing all his rights to compensation by the tenancy coming to a sudden end. But reading the definition of the phrase "determination of a tenancy" in sect. 61 (c)

(a) See sects. 1-6. The phrase, "in pursuance of the Act," is used in sects. 29, 57.

(b) See page 44.

(c) Page 8.

(d) As to relief against some forfeitures now granted by the court, and provisions as to notice, see the Conveyancing Act, 1881, s. 14, and *Quilter* v. *Mapleson* (47 L. T. Rep. N. S. 561; 9 Q. B. Div. 672); and *Ebbetts* v. *Booth* (*Law Times*, July 28, p. 325). Relief had long been granted for forfeitures for default in payment of rent and fire insurance.

(e) Page 8.

into sect. 1, (a) it seems clearly that the intention of the Legislature was to give compensation in such cases, and it is certain the Act was intended to apply to leases for lives. (b) Hence it seems probable that, in such cases, if the tenant promptly gives his notice as soon as his tenancy comes to an end, or as soon as he knows that it is about to come to an end, the courts will hold this to be sufficient. Still, until this point is actually decided he will run some risk of losing his compensation. This may be avoided if he can get his landlord to enter into an agreement with him under sects. 3-5, (c) and a clause is inserted in such agreement dispensing with the two months notice (d) in case of a sudden termination of the tenancy. Of course in a tenancy for years it is improbable that the tenancy will terminate suddenly, but a tenancy for lives must terminate suddenly, so that in the latter case an agreement is most important. Whenever a tenant surrenders his tenancy (of whatever description) he should take care to preserve all his rights to compensation, and to remember to provide for this difficulty about notice.

The two months are calendar months. As the notice is to be given two months *at least* before the determination of the tenancy, it may be given a considerable time before the two months, and for fear of accidents, it will be advisable to give it at least a few days in advance of the two months.

It should be noticed that the "determination of the tenancy," not the quitting of the farm, is the period from which the time is reckoned; for often a farmer remains in possession of some parts of the farm weeks after the contract of tenancy has determined.

The notice must be in writing. It should be signed by the tenant, although the Act does not say so. It must either be given to the landlord personally, *or* left for him at his last known place of abode in England, *or* sent through the post in a *registered* letter addressed to him there. (e)

The second paragraph of this section says that the landlord *may* give counter-notice to the tenant of his intention to counter-claim in respect of waste, &c. This must be read with sect. 6, sub-sect. (*c*). (f) It should be observed that this counter-notice only applies to waste, breach of covenant, and other agreements, and not to rent, taxes,

(a) Page 25.
(b) See definitions of "contract of tenancy" and "tenant" in sect. 61, pages 7, 8.
(c) Pages 32-38.
(d) For form see below.
(e) Sect. 28. See note on that section, page 72.
(f) Page 48.

rates, &c. Also the Act says the landlord *may* (not *shall*, as in the previous paragraph) give the notice. From this it might be argued that the landlord claiming a reduction under sect. 6 (*c*) was not bound to give the notice. But in Acts of Parliament "may" is often used for "shall," and moreover the phrase here probably means that the landlord must give the counter-notice if he desires to claim. Certainly it will be best for the landlord to give the notice, and if he wishes he may also state that he intends to claim for rent, &c., though he is not bound to give notice as to this, but may assert his claim for rent, &c., before the referees [a] without previous notice.

Sect. 6 (*c*) enables the landlord to claim in respect of "breach of covenant or other agreement *connected with the contract of tenancy*." Sect. 7 omits the last words in italics, but probably intends them to be understood.

No doubt Sunday is to be reckoned in counting the fourteen days.

The counter-notice may be given to the tenant personally, or left for him or sent by registered letter in the same way as the notice. [b]

It will not be enough for the notice or counter-notice to state that so much money is claimed. They must go into particulars, and say how much is claimed under each head, [c] and the tenant claiming for improvements must specify what the improvements are.

8. *Compensation agreed or settled by reference.*—The landlord and the tenant may agree on the amount and mode and time of payment of compensation to be paid under this Act.

If in any case they do not so agree the difference shall be settled by a reference.

This power enabling landlord and tenant to agree, is of special importance in the case of landlords who are limited owners, trustees, &c., as it applies to them as well as to absolute owners. [d] It will be seen that there are different periods when landlord and tenant may agree with respect to all improvements, viz., when the improvement is about to be made, [e] and under the above section when it is to be paid for.

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[a] Sect. 8, page 56.
[b] Page 72.
[c] See form below.
[d] Sect. 42, page 88.
[e] Sects. 3-5, pages 32-38.

In the case of Second and Third Class improvements, an agreement may also be made in the lease or agreement of tenancy. [a] By means of these agreements, often, the expense of a reference may be avoided.

Special provisions are made with respect to Crown and "Duchy" Lands, and those belonging to the Bishops and Clergy. [b]

In making the agreement the landlord who is a trustee, &c., should remember that, unless he guards himself, he will probably become personally liable for the compensation he agrees to pay; he can, however, agree as to the amount, and then let the tenant get a charge on the holding under sect. 31. [c]

Often some arrangement will be made as to getting the compensation from the incoming tenant; [d] and this plan seems especially to be suitable for clergy and tenants for life, and other limited owners.

In default of agreement the matter in difference is to be settled by a reference to arbitration, and the Act proceeds to lay down rules as to the mode in which the referees are to be appointed and the arbitration conducted.

9. *Appointment of referee or referees and Umpire.* — Where there is a reference under this Act, a referee, or two referees and an umpire, shall be appointed as follows:—

(1.) If the parties concur, there may be a single referee appointed by them jointly:

(2.) If before award the single referee dies or becomes incapable of acting, or for seven days after notice from the parties, or either of them, requiring him to act, fails to act, the proceedings shall begin afresh, as if no referee had been appointed:

(3.) If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee:

(4.) If before award one of two referees dies or becomes incapable of acting, or for seven days after notice

[a] Pages 35, 38. Query whether it may be done in the case of First Class improvements.

[b] Sects. 35-39, 42.

[c] Page 77.

[d] Sect. 56.

By the Settled Land Act, 1882, s. 48, the commissioners who formerly bore the three several styles of "Inclosure," "Copyhold," and "Tithe" Commissioners, became for all purposes the "Land Commissioners for England," and they retained all the powers that they previously enjoyed in any of their former capacities. Under the Agricultural Holdings Act, 1875, [a] they had as "Inclosure" Commissioners, similar powers with respect to appointment of umpire.

Any party who wishes the umpire to be appointed by the Land Commissioners must be careful to state so when he appoints his referee, and should give written notice of his wish to the other party at the time when he gives him notice of his appointment of referee.

The address of the Commissioners is [b] 3, St. James's-square, London, S.W.

In the same way a party who wishes the umpire to be appointed by the County Court must give like notice to the other party. If the other party "dissents," he must do it in writing, and he must serve his dissent like any other notice; [c] and though no time is here stated he should dissent promptly, lest the other party applies to the County Court, and he finds either that his dissent comes too late, or at least that he has to pay costs of the application.

An application to the County Court or to the Land Commissioners will, no doubt, increase the expense, and usually the appointment of the umpire will be made by the referees, unless they cannot agree as to whom they shall make umpire.

For form of appointment of umpire by referees see No. 31 below.

11. *Exercise of powers of County Court.*—The powers of the county court under this Act relative to the appointment of a referee or umpire shall be exerciseable by the judge of the court having jurisdiction, whether he is without or within his district, and may, by consent of the parties, be exercised by the registrar of the court.

This refers to the powers given by sect. 9, sub-sects. (6) (9), and sect. 10, sub-sect. (2). As to what County Court has jurisdiction, see sect. 61 [d]. As to general powers of a judge when not within his district, see 38 & 39 Vict. c. 50, s. 4.

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[a] See Act of 1875, sect. 23.
[b] As to fee, see Appendix.
[c] Sect. 28.
[d] Page 8.

Probably rules of procedure in the County Court will soon be issued; meanwhile, it may be convenient to call attention to Order XXXIV., r. 7, of the County Court Rules, 1875, being an order made with respect to the Agricultural Holdings Act, 1875. (See Pollock and Nicol, 8th edit. 565; Lloyd on County Courts, 600). We may mention, that a general sketch of the practice in the County Court, under the last-mentioned Act, will be found in Pollock and Nicol, 355, 564; Lloyd, 599.

Summary of Powers of County Court under this Act.

Besides the above powers with respect to the appointment of referees and umpire (a), the County Court has also the following powers:—

1. To extend time for umpire's award (sect. 18, page 65).
2. To tax costs of reference (sect. 20, page 67).
3. To hear appeals in certain cases (sect. 23, page 68).
4. To make orders for actual recovery of compensation, &c. (sect. 24, page 70).
5. To appoint guardians for infants, &c. (sect. 25, page 71).
6. To appoint next friend of married woman (sect. 26, page 71).
7. To take married woman's separate examination (sect. 26).
8. To charge holdings with compensation, &c. (sects. 29, 31, 39, pages 73, 77, 84).
9. To hear disputes in certain cases of distraining (sects. 46, 48).
10. To authorise and remove bailiffs (sect. 52).
11. To tax costs in certain cases connected with distress (see second schedule to the Act, last paragraph).

In some cases, these duties will fall to the lot of the judge, and in others to the registrar. In each case, the section imposing the duty or giving the power must be consulted.

12. *Mode of submission to reference.*—The delivery to a referee of his appointment shall be deemed a submission to a reference by the party delivering it; and neither party shall have power to revoke a submission, or the appointment of a referee, without the consent of the other.

As the appointment must be in writing (sect. 9 (10), it is capable of physical delivery. A party cannot revoke the appointment of his own referee without the consent of the other party, although the

(a) Sects. 9 (6) (9), 10 (2), 11, pages 58-60.

latter neglects to appoint his referee. If the other party will do nothing, he must go on under sect. 9, sub-sect. 6. (a) It should be noticed that time is reckoned from the date of the *delivery* of the appointment to the referee.

13. *Power for referee, &c., to require production of documents, administer oaths, &c.* — The referee or referees or umpire may call for the production of any sample or voucher, or other document, or other evidence which is in the possession or power of either party, or which either party can produce, and which to the referee or referees or umpire seems necessary for determination of the matters referred, and may take the examination of the parties and witnesses on oath, and may administer oaths and take affirmations; and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

The umpire only acts if the referees fail to make their award. (b) A referee or umpire is in many respects in the position of an arbitrator.

The word "sample" no doubt refers especially to cake and artificial manures. The terms of this section suggest the importance, to the tenant, of keeping vouchers, receipts, &c. See "Evidence" below. (c)

The following form (d) of oath will suffice:—"You shall true answers make to all such questions as shall be asked of you, touching the matters in question between the parties to this reference. So help you, God."

The following form of affirmation will suffice:—"I solemnly promise and declare that I will true answers make to all such questions as shall be asked me touching the matters in question between the parties to this reference."

14. *Power to proceed in absence.*—The referee or referees or umpire may proceed in the absence of either party where the same appears to him or them expedient, after notice given to the parties.

(a) Page 58.
(b) Sect. 18, page 66.
(c) Page 73.
(d) These forms are taken from Redman on Arbitrations.

Notice may be given in one of the modes stated in sect. 28. (a) Apparently, after notice, the proceedings may take place in the absence of both parties, or in the presence of one party and the absence of the other. If no notice has been given it would be "misconduct" on the part of an arbitrator to decide a case without hearing both parties, (b) and it is not proper even to hear evidence of one party without the other being present. If the arbitrator goes to view the land he should either go alone, have persons representing both parties to accompany him, or have one person approved of by both parties.

15. *Form of award.*—The award shall be in writing, signed by the referee or referees or umpire.

Where there is one referee the award is signed by him. Where there are two referees both sign. The umpire only signs when the matter has been taken out of the hands of the referees, and the matters have become referred to him. (c)

Further directions with respect to the form of the award are given by subsequent sections. It is to give particulars, (d) it may direct payment of costs, (e) and it must fix the day for payment of compensation, &c. (f)

It has been held that an arbitrator having made and signed his award is *functus officio* (*i.e.* that his authority is gone) and cannot alter the slightest error in it, even though such error has arisen from the mistake of the clerk in copying the draft, (g) nor can he (it would seem) correct a miscalculation in figures after delivery of it. (h) No precise form of words is necessary to constitute an award.

It is not proper for an arbitrator to take lunches and dinners with one of the parties in the absence of the other party, as it exposes him to suspicion of undue influence. (i)

As to stamps on the award see Appendix.

16. *Time for award for referee or referees.*—A single referee shall make his award ready for delivery within twenty-eight days after his appointment.

(a) Page 72.
(b) *Thornburn* v. *Barnes*, L. Rep. 2 C. P. 384.
(c) See sect. 18, page 66.
(d) Sect. 19, page 66.
(e) Sect. 20, page 67.
(f) Sect. 21, page 68.
(g) *Mordue* v. *Palmer*, L. Rep. 6 Ch. App. 22.
(h) See cases in Fisher's Digest, 1870, page 258.
(i) See *Moseley* v. *Simpson*, L. Rep. 16 Eq. 226; *Hopper's Arbitration*; L. Rep. 2 Q. B. 367.

Two referees shall make their award ready for delivery within twenty-eight days after the appointment of the last appointed of them, or within such extended time (if any) as they from time to time jointly fix by writing under their hands, so that they make their award ready for delivery within a time not exceeding in the whole forty-nine days after the appointment of the last appointed of them.

It will be noticed that the referee is bound to make his award *ready for delivery* within twenty-eight days; but he is not bound to deliver it then unless one of the parties asks for it and "takes it up," and pays the referee's costs and remuneration. The referee has a right to secure his own payment by keeping the award until he is paid, (a) although the party who takes it up is not the person by whom the costs are ultimately to be paid. Nevertheless such party is bound to pay the referee, and then he can claim repayment from the other party.

In reckoning these periods of four and seven weeks Sundays will be counted. (b)

A single referee cannot extend his authority beyond the four weeks. Where there are two referees they can extend their time to seven weeks and no further. After the failure of the referee or referees to make the award ready in time their authority will pass to the umpire under sect. 18.

17. *Award in respect of compensation under sects.* 3, 4, *and* 5.—In any case provided for by sections three, four, or five, if compensation is claimed under this Act, such compensation as under any of those sections is to be deemed to be substituted for compensation under this Act, if and so far as the same can, consistently with the terms of the agreement, if any, be ascertained by the referees or the umpire, shall be awarded in respect of any improvements thereby provided for, and the award shall, when necessary, distinguish such improvements and the amount awarded in

(a) Russell on Awards, 494.
(b) *Ex parte Simpkin*, 29 L. J. M. C. 23; 6 Jur. N. S. 144; Maxwell on Statutes, 312.

respect thereof; and an award given under this section shall be subject to the appeal provided by this Act.

Compensation substituted under sect. 3 is for First Class improvements, and arises from agreement made after "consent" previously to the execution of the improvement. (a)

Compensation substituted under sect. 4 is for Drainage, and arises from agreement. (b)

Compensation under sect. 5 may be either "specific," which may arise either by agreement, custom, or the Act of 1875, or "fair and reasonable," which can only arise by agreement. (c)

As to the Act of 1875, see partial repeal by sect. 62. The procedure under that Act was very similar to that under the present statute.

Where the compensation has been substituted by agreement, often some mode of compensation will be employed with the express object of saving the expense of a reference. For instance, where a tenant on a lease builds a house, it may be provided that at the end of the lease, if it determines by lapse of time, the tenant shall receive 200*l.* Here then all that the referees will have to do (if the landlord and tenant cannot agree under sect. 8) (d) is to make their award of 200*l.*, if they find all the conditions have been fulfilled. Then the proceedings for appeal, recovery of the money, &c., will take place as though the compensation was assessed under sect. 1. Of course the landlord may counter-claim in these cases of agreed compensation. Often, however, the agreement will simply give an easy mode by which the referees can assess compensation, as by allowing the tenant prime cost of the improvement, subject to a deduction of a proportionate part for every year during which the tenant has had the benefit of the improvement. This was the mode adopted by the Act of 1875.

Agreements which profess to give "fair and reasonable" compensation, and do not do so, are void, so far as they deprive the tenant of his right, under sect. 55. See note to that section.

The appeal is under sect. 23, (e) and is only available when the sum claimed exceeds 100*l.*, and even then only in certain cases.

18. *Reference to and award by umpire.*—Where two

(a) See pages 32-35.
(b) See pages 35-37.
(c) Page 38.
(d) Page 56.
(e) Page 68.

referees are appointed and act, if they fail to make their award ready for delivery within the time aforesaid, then, on the expiration of that time, their authority shall cease, and thereupon the matters referred to them shall stand referred to the umpire.

The umpire shall make his award ready for delivery within twenty-eight days after notice in writing given to him by either party or referee of the reference to him, or within such extended time (if any) as the registrar of the County Court from time to time appoints, on the application of the umpire or of either party, made before the expiration of the time appointed by or extended under this section.

"The time aforesaid" is twenty-eight days, or at most forty-nine days.(s) The referees need not actually deliver the award within the period, they need only make it ready for delivery. Either of the parties may ask the referees if they have it ready, and if they say "no," at once give notice to the umpire.

It is clear that the registrar cannot extend the time after it has once expired.

19. *Award to give particulars.*—The award shall not award a sum generally for compensation, but shall, so far as possible, specify—

(*a.*) The several improvements, acts, and things in respect whereof compensation is awarded, and the several matters and things taken into account under the provisions of this Act in reduction or augmentation of such compensation;

(*b.*) The time at which each improvement, act, or thing was executed, done, committed, or permitted;

(*c.*) The sum awarded in respect of each improvement, act, matter, and thing; and

(*d.*) Where the landlord desires to charge his estate with

(s) Sect. 16, page 63.

the amount of compensation found due to the tenant, the time at which, for the purposes of such charge, each improvement, act, or thing in respect of which compensation is awarded is to be deemed to be exhausted.

For further particulars as to the form of the award, see sect. 15 ;(a) and in case of substituted compensation, see sect. 17.(b)

The provisions relating to reduction and augmentation of compensation will be found in sect. 6.(c)

Provision for the landlord charging his estate is made by sect. 29. In consequence of the above sub-section, it will be well for a landlord who wishes to charge the land, either when he first appoints his referee, or at some subsequent time before the reference is closed, to state his desire, or else the award may get made or signed, and he will be in a difficulty, though *possibly*, notwithstanding the omission, the County Court may still exercise its powers under sect. 29.

The referees or umpire will have to decide when the improvements are to be deemed exhausted. They will not be bound by the provisions in the Act of 1875, s. 6 (though that section may usefully be consulted), nor yet by the custom of the country.

20. *Costs of reference.*—The costs of and attending the reference, including the remuneration of the referee or referees and umpire, where the umpire has been required to act, and including other proper expenses, shall be borne and paid by the parties in such proportion as to the referee or referees or umpire appears just, regard being had to the reasonableness or unreasonableness of the claim of either party in respect of amount, or otherwise, and to all the circumstances of the case.

The award may direct the payment of the whole or any part of the costs aforesaid by the one party to the other.

The costs aforesaid shall be subject to taxation by the

(a) Page 63. (b) Page 64.
(c) Page 48.

registrar of the County Court, on the application of either party, but that taxation shall be subject to review by the judge of the County Court.

Where the referees make the award, they will decide on their own remuneration; and, if the umpire has not acted, it is presumed that (unless he has made a special bargain with either of the parties) he can claim nothing. When the umpire makes the award, he can allow remuneration both to the referees and himself. It will be often convenient if, before the referees are appointed, the parties enter into an agreement with them as to the amount of remuneration to be allowed.

21. *Day for payment.*—The award shall fix a day, not sooner than one month after the delivery of the award, for the payment of money awarded for compensation, costs, or otherwise.

"Month" means "calendar month." The time is computed from the delivery of the award, not from the signing of it. The Act seems to allow the award to fix the day of payment at any distance of time *beyond* the month.

22. *Submission not to be removable, &c.*—A submission or award shall not be made a rule of any court, or be removable by any process into any court, and an award shall not be questioned otherwise than as provided by this Act.

The only mode of "questioning" an award which is provided by the Act is by sect. 23, and this only applies when the claim exceeds 100*l.* Still, it is presumed that the court would, before award made, remove from his post any referee guilty of wilful corruption, and possibly might also interfere, after award made, to restrain the party in whose favour it was made from proceeding upon it. Also, if any party and a referee "conspired" to defraud, they would be guilty of an indictable offence.

23. *Appeal to County Court.*—Where the sum claimed for compensation exceeds one hundred pounds, either party may, within seven days after delivery of the award, appeal against it to the judge of the County Court on all or any of the following grounds:

1. That the award is invalid:
2. That the award proceeds wholly or in part upon an improper application of or upon the omission properly to apply the special provisions of sections three, four, or five of this Act;
3. That compensation has been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation;
4. That compensation has not been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation;

and the judge shall hear and determine the appeal, and may, in his discretion, remit the case to be reheard as to the whole or any part thereof by the referee or referees or umpire, with such directions as he may think fit.

If no appeal is so brought, the award shall be final.

The decision of the judge of the County Court on appeal shall be final, save that the judge shall, at the request of either party, state a special case on a question of law for the judgment of the High Court of Justice, and the decision of the High Court on the case, and respecting costs and any other matter connected therewith, shall be final, and the judge of the County Court shall act thereon.

1. Under this head the judge can inquire whether the award complies with the requisites of this Act, and is otherwise sufficient in law. It must not exceed the "submission," it must be final and not contradictory. Apparently it can only order the payment of money, and not the doing of any act by either party.

2. For sects. 3, 4, 5, see pages 32-38; and see also sect. 17, page 64, and sect. 55, page 96.

3, 4. As to breach of covenant, waste, &c., see sect. 6, page 48. It would seem from the above, that under heads 3 and 4 no appeal lies when for any improvement, &c., *too much or too little* compensation has been awarded, only when *no* compensation has been awarded where it ought to have been, or *some* compensation has been awarded where it ought not to have been. In other words, under these two heads, no appeal lies for amount as to any particular improvement, &c. But, as by sect. 19 (a) each improvement, &c., will be separately specified, there will often be appeals for the purpose of reducing compensation as a whole.

If the judge thinks fit he may, instead of remitting the appeal, make an order himself. See sect. 24.

The judge is bound, if required, to state the special case on a question of law; but there is no appeal as to matters of fact. There is no further appeal from the High Court to the Court of Appeal or House of Lords.

It may be well to call attention to the procedure in the County Court under the Act of 1875. See County Court Order XXXIV.: (Pollock & Nicol, 364.)

24. *Recovery of compensation.*—Where any money agreed or awarded or ordered on appeal to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded or ordered to be paid, it shall be recoverable, upon order made by the judge of the County Court, as money ordered by a County Court under its ordinary jurisdiction to be paid is recoverable.

Money may be agreed to be paid under sect. 8, awarded to be paid under sects. 15-21, and ordered on appeal to be paid under sect. 23. (b)

It will be seen that the County Court judge, acting under this section, will not review or hear an appeal against the award; he will, in general, simply make the order for payment. It is presumed, however, that he will require evidence that an award has been made between the parties and the amount thereof, and that it was made by referees or an umpire who had jurisdiction to make it. Probably also the judge will refuse to make the order if the award on the

(a) Page 66.

(b) Pages 56, 68, 69.

face of it fails to comply with the requirements of the statute as to form, &c.

The position of the judge with respect to the referees may be compared with that of the Chancery Division to the Ecclesiastical Court in the proceedings by *significavit*.

25. *Appointment of guardian.*—Where a landlord or tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the County Court, on the application of any person interested, may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may change the guardian if and as occasion requires.

26. *Provisions respecting married women—45 & 46 Vict. c. 75.*—Where the appointment of a person to act as the next friend of a married woman is required for the purposes of this Act, the County Court may make such appointment, and may remove or change that next friend if and as occasion requires.

A woman married before the commencement of the Married Women's Property Act, 1882, entitled for her separate use to land, her title to which accrued before such commencement as aforesaid, and not restrained from anticipation, shall, for the purposes of this Act, be in respect of land as if she was unmarried.

Where any other woman married before the commencement of the Married Women's Property Act, 1882, is desirous of doing any act under this Act in respect of land, her title to which accrued before such commencement as aforesaid, her husband's concurrence shall be requisite, and she shall be examined apart from him by the County Court, or by the judge of the County Court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

The Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), commenced on January 1st, 1883 (M. W. P. Act, s. 25). Where a married woman was married before that date, and her title to the land accrued before that date, and she is either not entitled to her separate use *or* is restrained from anticipation, she must have her husband's concurrence and be separately examined. Observe that in this instance the County Court need not be the one in whose district the holding is.

The above section does not mention married women married after the commencement of the M. W. P. Act, 1882, because by sect. 1 of that statute they can act just as if they were unmarried. So, by sect. 5 of the M. W. P. Act, even married women who were married before that Act can, if their title to the land accrues after its commencement, act just as if they were unmarried. See Conybeare and Andrews, pp. 36, 60.

27. *Costs in County Court.*—The costs of proceedings in the County Court under this Act shall be in the discretion of the court.

The Lord Chancellor may from time to time prescribe a scale of costs for those proceedings, and of costs to be taxed by the registrar of the court.

It is presumed that the last part of the sentence refers to costs of the reference to arbitration, which sect. 20, p. 67, authorises the registrar to tax, and to certain costs of distraining, &c., which the second schedule to the Act authorises the registrar to tax. When these are published they will afford a useful guide to the referees and umpire.

28. *Service of notice, &c.*—Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to

prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served.

This section refers not only to notices, &c., in the portion of the Act headed "Procedure" (sects. 7-28), but to others mentioned in the Act, *e.g.*, notice of intention to drain under sect. 4. But probably it does not refer to notices sent in legal proceedings in the County and High Courts, or to notices to quit. The post office registration receipt should be preserved, but it would not be safe to rely on it for proof of registration and postage of the letter.

EVIDENCE.

Before proceeding further, it may be well to remind tenants of the great importance both of obtaining and preserving proper evidence to support their claims. And this is the more necessary as many years may elapse between the time of making the improvement and the time of making the claim, at which possibly both landlord and tenant may be dead. The tenant should, therefore, not only keep all consents and letters to him, and copies of notices under sect. 4, sent by him, vouchers for payments, analyses, &c., but he should take care that there is some one besides himself who should see what improvements are made by him, should be able to testify what prices are paid by him, and in what manner the improvements are carried out, and who should be able to prove that the alleged copies of letters, notices, &c., are correct copies, and that they were actually served on the landlord (see sect. 28). Sometimes "admissions" by a landlord will be very useful. See Form below.

Charge of Tenant's Compensation.

29. *Power for landlord on paying compensation to obtain charge.*—A landlord, on paying to the tenant the amount due to him in respect of compensation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, or on expending such amount as may be necessary to execute an improvement under the second part of the first schedule hereto, after notice given by the tenant of his intention to execute such improvement in accordance with this Act, shall be entitled

to obtain from the County Court a charge on the holding, or any part thereof, to the amount of the sum so paid or expended.

The court shall, on proof of the payment or expenditure, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this Act, make an order charging the holding, or any part thereof, with repayment of the amount paid or expended, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the court thinks fit.

But, where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, where an award has been made, be taken to have been exhausted according to the declaration of the award, and in any other case after the time when any such improvement will in the opinion of the court, after hearing such evidence (if any) as it thinks expedient, have become exhausted.

The instalments and interest shall be charged in favour of the landlord, his executors, administrators, and assigns.

The estate or interest of any landlord holding for an estate or interest determinable or liable to forfeiture by reason of his creating or suffering any charge thereon shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

Capital money arising under the Settled Land Act, 1882, (a) may be applied in payment of any moneys expended and costs incurred by a landlord under or in pursuance of this Act in or about the execution of any improvement mentioned in the first or second parts of the schedule hereto,

(a) 45 & 46 Vict. c. 38.

as for an improvement authorised by the said Settled Land Act; and such money may also be applied in discharge of any charge created on a holding under or in pursuance of this Act in respect of any such improvement as aforesaid, as in discharge of an incumbrance authorised by the said Settled Land Act to be discharged out of such capital money.

This enables a landlord to obtain a charge not only when compensation is awarded under the Act, but for substituted compensation under sects. 3, 4, 5, and for money expended by himself on drainage after notice, under sect. 4.

The provision that the charge may be on *part* of the holding is very beneficial, because, if it is charged on the whole, and then a part is sold, there is expense and trouble in apportionment, &c.

Where the landlord is absolute owner there will in general be little inducement to make any charge, still, even in such a case, it may afford a means of providing for younger children. But where he is "tenant for life," &c., it will be obviously an advantage that he has the power of at least partially recouping himself.

It will be seen that the period of "exhaustion," beyond which the charge may not exist, is defined by the award where one is made. (a) Where there is no award, as in the case of an agreement under sect. 8, the court will have to fix the period.

The paragraph relating to forfeiture is to meet cases where there is a provision, in a deed or will, putting an end to a person's interest if he charges the estate, or suffers it to be charged. By virtue of the above section the interest will *not* be forfeited or determined.

Capital money arising under the Settled Land Act, 1882 (45 & 46 Vict. c. 38), may arise in various ways; *e.g.*, from sale, partition, or exchange of the settled land, enfranchisement of copyholds belonging to a settled manor, from portion of rent under mining lease, fines, sale of timber, &c. (b)

Also, money in court, which was paid into court under the Lands Clauses Consolidation Acts, or other Acts of Parliament, and liable to be invested in the purchase of lands to be settled, and money in the hands of trustees which is liable to be similarly invested, may be

(a) See sect. 19 (*d*), page 66.
(b) See Wolst. & Turn. p. 80; Dodd's Settled Land, 22, 41.

employed as capital money arising under the Settled Land Act, (a) and therefore (it is submitted) may be disposed of as permitted by this section.

It is now, moreover, decided, by a liberal construction of the Settled Land Act, that sect. 69 of the Lands Clauses Consolidation Act, 1845, is to be read with sect. 32 of the Settled Land Act, and that money paid into court for the purchase of charity lands, under the Lands Clauses Consolidation Acts, may be laid out as capital money arising under the Settled Land Act: (*Byron's Charity*, 48 L. T. Rep. N. S. 515; 23 Ch. Div. 171; 31 W. R. 517; *Bethlem Hospital*, *Law Times*, April 28, 1883, p. 466.)

Hence it seems that the Settled Land Act, s. 32, also applies to money which is in court representing glebe or other corporation lands. *Re Hanbury's Trusts* (*Law Times*, June 23, p. 146; W. N., *Ib.*, p. 116) confirms this view.

As to charges obtainable by Queen Anne's Bounty on ecclesiastical incumbents' land, see sect. 39, p. 84; and as to charge by trustees for ecclesiastical or charitable purposes, see sect. 40, p. 86.

30. *Incidence of charge.*—The sum charged by the order of a County Court under this Act shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein, and for all interests therein subsequent to that of the landlord; but so that the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assigns, in the tenancy where the landlord is himself a tenant of the holding.

Where the landlord is himself a leaseholder, he will have to pay full compensation to the tenant, and he can get no charge under sect. 29 which will be available as against his (the superior) landlord. A leaseholder should consider this before giving "consent" to any improvement. Probably in many cases his plan will be to follow the steps of his tenant, and when the tenant asks his consent he will immediately ask his landlord; if the tenant gives notice to drain, he may give a similar notice. It seems probable, and it is submitted, that the leaseholder, when his tenancy determines, can claim *as tenant* against his landlord. See the definitions of "landlord" and "tenant" in sect. 61, p. 8. The leaseholder who pays the tenant compensa-

(a) S. L. A., sects. 32, 33.

tion for the tenant's improvement seems to be a person deriving title from a tenant, and hence, if he has taken the requisite steps and the improvement is still unexhausted, can claim.

31. *Provision in case of trustee.*—Where the landlord is a person entitled to receive the rents and profits of any holding as trustee, or in any character otherwise than for his own benefit, the amount due from such landlord in respect of compensation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, shall be charged and recovered as follows and not otherwise; (that is to say),

(1.) The amount so due shall not be recoverable personally against such landlord, nor shall he be under any liability to pay such amount, but the same shall be a charge on and recoverable against the holding only.

(2.) Such landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the County Court a charge on the holding to the amount of the sum required to be paid or which has been paid, as the case may be, to the tenant.

(3.) If such landlord neglect or fail within one month after the tenant has quitted his holding to pay to the tenant the amount due to him, then after the expiration of such one month the tenant shall be entitled to obtain from the County Court in favour of himself, his executors, administrators, and assigns, a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge or in raising the amount due thereunder.

(4.) The court shall on proof of the tenant's title to have a charge made in his favour make an order charging

the holding with payment of the amount of the charge, including costs, in like manner and form as in case of a charge which a landlord is entitled to obtain.

The object of this section is to protect trustees and other persons who get no benefit out of the land from being personally subject to the burden, and to transfer it to the land. The section does not apply to tenant for life, tenant by the curtesy, or other person who receives the rents for his own benefit, although his interest may be a very temporary one. Such a person may get a charge under sect. 29. By sub-sect. (2) a trustee may, either *before* or after paying the tenant, get a charge. An ordinary landlord has to wait till he has paid before he can do so. (a)

In sub-sect. 3 "month" means "calendar month." A tenant can only get a charge after quitting his holding. This is consistent with sect. 7. (b) The procedure in the County Court will resemble that under sect. 29.

32. *Advance made by a company.*—Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made by a County Court under the provisions of this Act, upon such terms and conditions as may be agreed upon between such company and the person entitled to such charge; and such company may assign any charge so acquired by them to any person or persons whomsoever.

Notice to Quit.

33. *Time of notice to quit.*—Where a half-year's notice, expiring with a year of tenancy is by law necessary and sufficient for determination of a tenancy from year to year, in the case of any such tenancy under a contract of tenancy

(a) Sect. 29, page 73.

(b) Page 53. But consider the case of a tenant who has made an agreement that he shall be paid while "sitting"; and the case where the landlord is himself a leaseholder.

made either before or after the commencement of this Act, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same, unless the landlord and tenant of the holding, by writing under their hands, agree that this section shall not apply, in which case a half-year's notice shall continue to be sufficient; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.

The following was the old common law rule:—

"Where a tenancy from year to year is created by express agreement, and there is no special stipulation or local custom providing for the determination of the tenancy, the usual notice to quit required by law, *i.e.*, half a year's notice to quit at the end of the first or some other year of the tenancy, must be given. The same rule applies where a tenancy from year to year is *implied by law* from the payment and acceptance of rent, or from other circumstances." (a)

In such cases a *year's* notice will be necessary instead of a half-year's.

By the Act of 1875, s. 51, a similar extension of notice was made, but that Act did not apply to holdings under two acres, or to market gardens, and moreover was excluded in very many cases.

A yearly tenancy, which by express agreement of the parties is determinable on six months' notice to quit, is not within the Agricultural Holdings Act, 1875, s. 51, which provides that "where a half-year's notice, expiring with the year of tenancy, is by law necessary and sufficient for determination of a tenancy from year to year, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same." (b) It is doubtful whether this decision applies to the new Act, but probably it does apply. (c)

The above section applies both to tenancies made before and after the Act. It may be excluded by agreement, but not by a mere notice by the landlord that he does not desire to come within its provisions.

(a) Woodfall, L. & T. page 302.

(b) *Wilkinson* v. *Calvert*, 3 C. P. Div. 360.

(c) Coleridge, C.J. said, "It is plain that six months' notice is not a half-year's notice." See also *Morgan* v. *Davies*, 3 C. P. Div. 260.

Fixtures.

34. *Tenant's property in fixtures, machinery, &c.*—Where after the commencement of this Act a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, then such fixture or building shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy.

Provided as follows :—

1. Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect to the holding:
2. In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding:
3. Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal:
4. The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it:
5. At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the

property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal).

This only applies to fixtures and erections affixed after 1884. Any rights in respect to fixtures, affixed before Jan. 1st, 1883. either under the Act of 1875, (a) or otherwise, (b) may be enforced as before. In some cases, tenants are partially protected with regard to fixtures (erected with the landlord's written consent) by 14 & 15 Vict. c. 25. (c)

The tenant is allowed by this section "a reasonable time after the termination of the tenancy," because the general rule of the common law is, that if a tenancy is over, the tenant's right to remove even such fixtures as the common law allowed him to remove is gone; though there may in some cases be a kind of "excrescence" of the term (d) while he remains in possession, during which he may remove the fixtures.

Under the above section, the tenant should remove his fixtures before he gives up possession of the farm. "Month" means calendar month.

As to references under the Act, see sect. 8 *et seq.* There will be no appeal under sect. 23.

Crown and Duchy Lands.

35. *Application of Act to Crown Lands.*—This Act shall extend and apply to land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown.

With respect to such land, for the purposes of this Act, the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them, or other the proper officer or body having charge of such land for the time being, or in case there is no such officer or body, then such person

(a) Sect. 62 (*d*), page 107.
(b) Sect. 60, page 104.
(c) As to Law of Fixtures, see Woodfall, 593; *Elwes* v. *Mawe*, 2 Smith, L. C. 162.
(d) *Ex parte Stephens*, 7 Ch. Div. 130.

as Her Majesty, her heirs or successors, may appoint in writing under the Royal Sign Manual, shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

Any compensation payable under this Act by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or either of them, in respect of an improvement mentioned in the first or second part of the first schedule hereto, shall be deemed to be payable in respect of an improvement of land within section one of the Crown Lands Act, 1866, and the amount thereof shall be charged and repaid as in that section provided with respect to the costs, charges, and expenses therein mentioned.

Any compensation payable under this Act by those commissioners, or either of them, in respect of an improvement mentioned in the third part of the first schedule hereto, shall be deemed to be part of the expenses of the management of the land revenues of the Crown, and shall be payable to those commissioners out of such money and in such manner as the last-mentioned expenses are by law payable.

36. *Application of Act to land of Duchy of Lancaster*—This Act shall extend and apply to land belonging to Her Majesty, her heirs and successors, in right of the Duchy of Lancaster.

With respect to such land for the purposes of this Act, the Chancellor for the time being of the Duchy shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement mentioned in the first or second part of the first schedule to this Act shall be deemed to be an expense incurred in improvement of land belonging to Her Majesty, her heirs or

successors, in right of the Duchy, within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven, and shall be raised and paid as in that section provided with respect to the expenses therein mentioned.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement mentioned in the third part of the first schedule to this Act shall be paid out of the annual revenues of the Duchy.

37. *Application of Act to land of Duchy of Cornwall.*—This Act shall extend and apply to land belonging to the Duchy of Cornwall.

With respect to such land, for the purposes of this Act, such person as the Duke of Cornwall for the time being, or other the personage for the time being entitled to the revenues and possessions of the Duchy of Cornwall, from time to time, by sign manual, warrant, or otherwise, appoints, shall represent the Duke of Cornwall or other the personage aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder.

Any compensation payable under this Act by the Duke of Cornwall, or other the personage aforesaid, in respect of an improvement mentioned in the first or second part of the first schedule to this Act shall be deemed to be payable in respect of an improvement of land within section eight of the Duchy of Cornwall Management Act, 1863,(a) and the amount thereof may be advanced and paid from the money mentioned in that section, subject to the provision therein made for repayment of sums advanced for improvements.

(a) 26 & 27 Vict. c. 49.

Ecclesiastical and Charity Lands.

38. *Landlord, archbishop or bishop.* — Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord shall not be exercised by the archbishop or bishop, in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners for England.

The office of the Ecclesiastical Commissioners is at 10, Whitehall-place, S.W.

Some of the remarks on the next section will, *mutatis mutandis*, apply to this also.

39. *Landlord, incumbent of benefice.*—Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the patron of the benefice, that is, the person, officer, or authority who, in case the benefice were vacant, would be entitled to present thereto, or of the Governors of Queen Anne's Bounty (that is, the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy).

In every such case the Governors of Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him under this Act; and thereupon they may, instead of the incumbent, obtain from the County Court a charge on the holding, in respect thereof, in favour of themselves.

Every such charge shall be effectual, notwithstanding any change of the incumbent.

This section prevents an incumbent from exercising "the powers of a landlord" without consent.

It applies to rectors (with cure of souls), vicars, &c.

It applies to donatives, and livings in the gift of the bishop, though the phrase "presentation" is perhaps hardly strictly accurate in these cases.

It does not apply to a clergyman's private property.

We shall first consider the incumbent's powers if he does not obtain the necessary approval. It will be noticed that the section does not take away all the tenant's rights to compensation, but it does take away the power of the incumbent to give "consent" to First Class improvements, and to make any agreements for compensation which will bind his successor on the land.

It is probable, however, that he can exercise all the powers as to appointing referee, &c., which are conferred on "a party" by sect. 9 *et seq.*

But he cannot charge the land under sect. 29 so as to recoup himself; and, if he desires to recoup himself in any way, it will be safer for him to get approval if he makes an agreement as to compensation under sect. 8, page 56.

The approval must be previous and in writing. Either that of the "patron" *or* that of Queen Anne's Bounty will suffice. The office of Queen Anne's Bounty is at 3, Great Dean's-yard, Westminster, S.W.

Where there are several joint patrons, all should join in giving approval. Where the "next presentation" belongs to one person and the advowson to another, the "approval" of the owner of the "next presentation" will probably suffice; but it will be safer to get the approval also of the owner of the advowson.

If the incumbent is also patron it is doubtful whether he can act in a double capacity, and give approval to his own acts. The case of *The Marquis of Salisbury* (n) is in favour of allowing a person to give consent to his own acts; but the safe plan is to get consent from the Bounty Office. If an incumbent makes an agreement without the needful approval, he *may* find himself personally liable, although he may have vacated the living, or a similar liability may fall upon his personal representatives. Even when he has received approval, if he continues in the living till the tenant's period for claim arrives, he may find that he has to pay the money without being able to get it back again; for he cannot obtain a charge under sect. 29 without "approval." The Bounty Office may refuse to pay (sect. 39), and he may not be able to find an incoming tenant (sect. 56). Indeed,

(n) 2 Ch. Div. 29.

if he does, it seems that he could not transfer the liability to the incoming tenant without the "approval."

Besides all these difficulties the incumbent must remember his liabilities with regard to dilapidations on buildings, and the stringency of the Ecclesiastical Dilapidations Act, 1871.

Practically when an incumbent does desire to give consent to First Class improvements, or to make any agreement, &c., his best plan will be to write to Queen Anne's Bounty Office, and inquire whether they will give previous approval, and will, when the time for compensation comes, pay it and charge it on the living, or at least allow him to get payment from an incoming tenant. See, however, page 133.

It will be necessary for a tenant receiving any covenant or entering into any agreement which requires "approval," to see that the approval is obtained. For, although possibly in some cases he might have a remedy personally against the incumbent, this would not always be open to him, nor would it always be efficacious.

The incumbent cannot avoid liability to pay compensation for Third Class improvements. He can only recoup himself by arrangement with the incoming tenant, by getting the Bounty Office to pay, or by himself getting a charge.

40. *Landlord, charity trustees, &c.*—The powers by this Act conferred on a landlord in respect of charging the land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the previous approval in writing of the Charity Commissioners for England and Wales.

This only prevents the trustees from charging the land, it does not prevent their exercise of other powers. Also it does not prevent the *tenant* from getting a charge under sect. 31 (3), page 77. Observe that these ecclesiastical lands are in a different position from those in the hands of the bishops and other clergy.

Resumption for Improvements, and Miscellaneous.

41. *Resumption of possession for cottages, &c.*—Where on a tenancy from year to year a notice to quit is given by the landlord with a view to the use of land for any of the following purposes:

The erection of farm labourers' cottages or other houses, with or without gardens;

The providing of gardens for existing farm labourers cottages or other houses;

The allotment for labourers of land for gardens or other purposes;

The planting of trees;

The opening or working of any coal, ironstone, limestone, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith;

The obtaining of brick earth, gravel, or sand;

The making of a watercourse or reservoir;

The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith;

and the notice to quit so states, then it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding.

In every such case the provisions of this Act respecting compensation shall apply as on determination of a tenancy in respect of an entire holding.

The tenant shall also be entitled to a proportionate reduction of rent in respect of the land comprised in the notice to quit, and in respect of any depreciation of the value to him of the residue of the holding, caused by the withdrawal of that land from the holding or by the use to be made thereof, and the amount of that reduction shall be ascertained by agreement or settled by a reference under this Act, as in case of compensation (but without appeal).

The tenant shall further be entitled, at any time within twenty-eight days after service of the notice to quit, to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, to take effect at the expiration of the then current

year of tenancy; and the notice to quit shall have effect accordingly.

The object of this section is to enable the landlord to resume a *part* of the holding for certain improvements without determining the tenancy. This section only applies to tenancies from year to year.

The list of improvements is very different from the list of tenants' improvements in the first schedule, (a) and may be compared with those in sect. 25 of the Settled Land Act, 1882. (b)

The notice must not merely state that the land is wanted for the purposes of sect. 41, but must state the actual purpose for which the land is required.

The tenant may either stay on in the rest of the holding, or give a counter notice. If he stays he may claim compensation for improvements and reduction of rent.

It is presumed that the compensation will be only for the improvements on the part of the holding yielded up, and not on the entire holding. This is the reasonable interpretation, and, moreover, the Act says "*an*" (not *the*) entire holding.

Possibly occasionally some difficulties may arise under sect. 6 (*b*) with regard to crops carried off the part to be yielded up and used on the other part of the holding.

For the provisions for a "reference" under this Act, see sect. 9, (c) *et seq.*

42. Provision as to limited owners.—Subject to the provisions of this Act in relation to Crown, Duchy, ecclesiastical, and charity lands, a landlord, whatever may be his estate or interest in his holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act which he might give or make or do or have done to him if he were in the case of an estate of inheritance owner thereof in fee, and in the case of a leasehold possessed of the whole estate in the leasehold.

(a) Page 3.

(b) Wolst. & T. 39; Dodd, 96.

(c) Page 57.

As to Crown, see sect. 35, page 81; as to Duchy of Lancaster, sect. 36, page 82; as to Duchy of Cornwall, sect. 37, page 83; and as to lands belonging to bishops, sect. 38, page 84; to other clergy, sect. 39, page 84; to trustees for ecclesiastical or charitable purposes, sect. 40, page 86.

This section does not apply to any improvements except the twenty-three mentioned in the schedule. (a)

It is presumed that some kind of limit will be placed by interpretation by the courts on the very wide terms. For instance, it could not be intended to enable a tenant for life to agree to give half the land to the tenant when he quitted the holding, if the tenant would build a house on the other half, see page 34.

"Leasehold" will comprise holdings on lease for lives as well as years. The leaseholder is not by this section enabled to affect the interest of his superior landlord, see page 76.

43. *Provision in case of reservation of rent.*—When, by any Act of Parliament, deed, or other instrument, a lease of a holding is authorised to be made, provided that the best rent, or reservation in the nature of rent, is by such lease reserved, then, whenever any lease of a holding is, under such authority, made to the tenant of the same, it shall not be necessary, in estimating such rent or reservation, to take into account against the tenant the increase (if any) in the value of such holding arising from any improvements made or paid for by him on such holding.

This section is merely permissive, see page 14. If it is not intended that the tenant shall both have the land at the lower rent and then have full compensation, arrangements should be made accordingly. The matter should not be left to cause a dispute under sect, 6 (*a*) or otherwise.(b)

PART II.

Distress.

44. *Limitation of distress in respect of amount and time.*—After the commencement of this Act it shall not be lawful for

(a) See page 3. | (b) Page 48.

any landlord entitled to the rent of any holding to which this Act applies to distrain for rent which became due in respect of such holding more than one year before the making of such distress, except in the case of arrears of rent in respect of a holding to which this Act applies existing at the time of the passing of this Act, which arrears shall be recoverable by distress up to the first day of January one thousand eight hundred and eighty-five to the same extent as if this Act had not passed.

Provided that where it appears that according to the ordinary course of dealing between the landlord and tenant of a holding the payment of the rent of such holding has been allowed to be deferred until the expiration of a quarter of a year or half a year after the date at which such rent legally became due, then for the purpose of this section the rent of such holding shall be deemed to have become due at the expiration of such quarter or half year as aforesaid, as the case may be, and not at the date at which it legally became due.

These provisions only apply to holdings to which the Act applies: (see sect. 54, and page 28 above).

The commencement of this Act is January 1st, 1884, and it "passed" on the 25th August, 1883. Subject to two exceptions, it prevents a landlord from distraining for rent which became due more than one year before the making of the distress. One of these exceptions is merely temporary, and the other provides for the case where payment is usually postponed for a "quarter" or "half year." This exception does not touch the case where rent is postponed for a month or two; nor would it be safe to rely on it where there had been no previous payments of rent by the tenant so as to "create" an "ordinary course of dealing," although it might be the custom of the estate.

For some years there has been a growing feeling against the stringency of the law of distress. The Lodgers' Goods Protection Act, 1871 (34 & 35 Vict, c. 79) is one example of this. It is noticeable, too, that (under special circumstances and on terms) an injunction

was obtained preventing a landlord from distraining in *Shaw* v. *Earl of Jersey*. (a)

As to distress generally, see Woodfall, 374; *Semayne's Case*, 1 Smith L. C. 105.

The following is the text of sect. 42 of the Bankruptcy Act, 1883:—

42. (1.) The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

(2.) For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a debtor whose debts do not exceed 50*l*., or of a deceased person who dies insolvent.

45. *Limitation of distress in respect of things to be distrained.*—Where live stock belonging to another person has been taken in by the tenant of a holding to which this Act applies to be fed at a fair price agreed to be paid for such feeding by the owner of such stock to the tenant, such stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and if so distrained by reason of other sufficient distress not being found, there shall not be recovered by such distress a sum exceeding the amount of the price so agreed to be paid for the feeding, or if any part of such price has been paid exceeding the amount remaining unpaid, and it shall be lawful for the owner of such stock, at any time before it is sold, to redeem such stock by paying to the distrainer a sum equal to such price as aforesaid, and any payment so made to

(a) 4 C. P. Div. 124.

the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding: Provided always, that so long as any portion of such live stock shall remain on the said holding the right to distrain such portion shall continue to the full extent of the price originally agreed to be paid for the feeding of the whole of such live stock, or if part of such price has been *bonâ fide* paid to the tenant under the agreement, then to the full extent of the price then remaining unpaid.

Agricultural or other machinery which is the *bonâ fide* property of a person other than the tenant, and is on the premises of the tenant under a *bonâ fide* agreement with him for the hire or use thereof in the conduct of his business, and live stock of all kinds which is the *bonâ fide* property of a person other than the tenant, and is on the premises of the tenant solely for breeding purposes, shall not be distrained for rent in arrear.

These provisions as to "live stock" do not apply where the stock has been taken in gratuitously. As the phrase used is "fair *price* agreed *to be paid*," it is doubtful whether it will apply to a case where the animals are taken in for some valuable consideration other than money. As to "fair price," see also sect. 46. "Live stock" is defined by sect. 61 (see page 8).

In any case the protection of live stock is only partial. It would be well always to have the agreement in writing.

Agricultural machinery lent gratuitously, if under an agreement, &c., and live stock on the premises for breeding purposes, seem to be protected. The distinction between the live stock and these is clear. The former consume the grass which ought to pay the landlord's rent. The latter will rather the better enable the tenant to pay rent.

46. *Remedy for wrongful distress under this Act.*—Where any dispute arises—

(*a.*) In respect of any distress having been levied contrary to the provisions of this Act; or

(*b.*) As to the ownership of any live stock distrained, or as to the price to be paid for the feeding of such stock; or

(*c.*) As to any other matter or thing relating to a distress on a holding to which this Act applies:

such dispute may be heard and determined by the County Court or by a court of summary jurisdiction, and any such County Court or court of summary jurisdiction may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid in the case where the price of the feeding is required to be ascertained, or may make any other order which justice requires. Any such dispute as mentioned in this section shall be deemed to be a matter in which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts; but any person aggrieved by any decision of such court of summary jurisdiction under this section may, on giving such security to the other party as the court may think just, appeal to a court of general or quarter sessions.

As to sub-sect. (*a*), see sects. 44, 45, 47.

As to sub-sects. (*b*), "live stock" and "price of feeding," see sect. 45.

As to sub-sect. (*c*), see sects. 44-52.

As to what County Court, see sect. 61, page 8.

47. *Set-off of compensation against rent.*—Where the compensation due under this Act, or under any custom or contract, to a tenant has been ascertained before the landlord distrains for rent due, the amount of such compensation may be set off against the rent due, and the landlord shall not be entitled to distrain for more than the balance.

This does not apply while the amount of compensation is still unascertained, even though it is practically certain that the amount will exceed the sum distrained for. But possibly in such a case an injunction might be granted on terms that the tenant paid the rent money into court. (a)

48. *Exclusion of certiorari.*—An order of the County Court or of a court of summary jurisdiction under this Act shall not be quashed for want of form, or be removed by *certiorari* or otherwise into any Superior Court.

49. *Limitation of costs in case of distress.*—No person whatsoever making any distress for rent on a holding to which this Act applies when the sum demanded and due shall exceed the sum of twenty pounds for or in respect of such rent shall be entitled to any other or more costs and charges for and in respect of such distress or any matter or thing done therein than such as are fixed and set forth in the second schedule hereto.(b)

50. *Repeal of* 2 *Will. & M. c.* 5, *s.* 1, *as to appraisement and sale at public auction.*—So much of an Act passed in the second year of the reign of their Majesties King William the Third and Mary, chapter five, as requires appraisement before sale of goods distrained is hereby repealed as respects any holding to which this Act applies, and the landlord or other person levying a distress on such holding may sell the goods and chattels distrained without causing them to be previously appraised; and for the purposes of sale the goods and chattels distrained shall, at the request in writing of the tenant or owner of such goods and chattels, be removed to a public auction room or to some other fit and proper place specified in such request, and be there sold. The costs and expenses attending any such removal, and any damage to

(a) See page 91. | (b) Page 109.

the goods and chattels arising therefrom, shall be borne and paid by the party requesting the removal.

"The tenant" means the tenant of the holding: (see sect. 61, page 8.) But in some instances goods and chattels not belonging to the tenant may be distrained. In such cases the owner of the goods is entitled to the benefit of this section, and the following one. Both sections apply to other persons levying distress as well as to landlords, and so do some of the other sections relating to distress.

51. *Extension time to replevy at request of tenant.*—The period of five days provided in the said Act of William and Mary, chapter five, within which the tenant or owner of goods and chattels distrained may replevy the same shall, in the case of any distress on a holding to which this Act applies, be extended to a period of not more than fifteen days, if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress, and also give security for any additional costs that may be occasioned by such extension of time. Provided that the landlord or person levying the distress may, at the written request or with the written consent of the tenant, or such owner as aforesaid, sell the goods and chattels distrained or part of them at any time before the expiration of such extended period as aforesaid.

52. *Bailiffs to be appointed by County Court judges.*—From and after the commencement of this Act no person shall act as a bailiff to levy any distress on any holding to which this Act applies unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of the judge of a County Court; and every County Court judge shall, on or before the thirty-first day of December one thousand eight hundred and eighty-three, and afterwards from time to time as occasion shall require, appoint a competent number of fit and proper persons to act as such bailiffs as aforesaid. If

any person so appointed shall be proved to the satisfaction of the said judge to have been guilty of any extortion or other misconduct in the execution of his duty as a bailiff, he shall be liable to have his appointment summarily cancelled by the said judge.

The commencement of the Act is the 1st January, 1884, but the County Court judges must make their appointments of bailiffs before that date. This section does not take away the landlord's right to distrain in person.

PART III.

General Provisions.

53. *Commencement of Act.*—This Act shall come into force on the 1st day of January one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

It is rather curious that the County Court judges are required to appoint bailiffs under sect. 52 *before* the 1st January, 1884.

54. *Holdings to which Act applies.*—Nothing in this Act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural, and as to the residue pastoral, or in whole or in part cultivated as a market garden, or to any holding let to the tenant during his continuance in any office, appointment, or employment held under the landlord.

This makes it clear that the sections in Part II. relating to distress do not apply universally, even though some of them do not contain words expressly restricting them to holdings to which this Act applies.

As to this section, see page 28.

55. *Avoidance of agreement inconsistent with Act.*—Any contract, agreement, or covenant made by a tenant, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement mentioned in

the first schedule hereto (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act), shall, so far as it deprives him of such right, be void both at law and in equity.

The object of this section is to prevent tenants from "contracting themselves out of the Act." As soon as the Act of 1875 was passed notices were sent out, and afterwards agreements were made by virtue of which that Act was excluded in most cases, so that this is inserted in the present Act to prevent similar exclusion.

This section is not worded nearly so strongly as the corresponding section (sect. 51) of the Settled Land Act, 1882, which prevents settlors from depriving "tenants for life," &c., of the powers conferred upon them by that statute.

We shall first consider what agreements, &c., are void, and then what are valid.

It is clear that if in a lease or agreement for tenancy there is a clause stating that the tenant shall not claim compensation, or simply declaring the Act "excluded," nevertheless the tenant would be able to claim compensation as if the clause did not exist. But the whole lease or agreement will not be void; only it will have to be read, and will operate, as if the *clause* was struck out.

If a tenant binds himself to pay an extra penal rent, or to pay the landlord a large lump sum, if he claims compensation (and by that means practically prevents himself claiming), it is very possible the courts would hold such an agreement void. And it is submitted the result might be the same, though the form of the agreement was for rent at a certain sum *reducible* if the tenant did not claim. All these would be attempts to evade the Act which, it may be hoped, would be treated as they deserve. At all events, it would be very unwise for a landlord to try them.

It should be noticed that the landlord may refuse consent to the First Class improvements, and he may, by doing the drainage himself, prevent the tenant draining, so that this section is important, chiefly with regard to Third Class improvements The section, however, expressly excepts certain authorised agreements. These are:—

(1.) Agreements for First Class improvements after consent, sect. 3, page 32.

(2.) Agreements for drainage after notice, or independently of notice, sect. 4, pages 35-37.

(3.) Agreement for Third Class improvements in "current tenancies" providing *specific* compensation, sect. 5, pages 38-41. This also applies to First and Second Class ones.

(4.) Agreement for Third Class improvements providing *fair and reasonable* compensation, sect. 5, pages 38-42.

These have been previously discussed in connection with the above sections, but it is needful to consider more carefully the fourth species of agreement; and there are two subjects for discussion: 1st, what is "fair and reasonable" compensation; 2nd, if the tenant has entered into an agreement which he thinks is not "fair," &c., what is his remedy? Both these questions are doubtful, and it is impossible to say what the courts will decide, but the following remarks are submitted.

The Act directs that, in deciding what is "fair," &c., "regard shall be had to all the circumstances existing at the time of making such agreement." The scale of 1875, and the custom of the country, may be considered, and also the amount of compensation the tenant would have had a right to expect—looking from the time of making the agreement—had he never entered into the agreement. It is believed that often custom gave a very inadequate compensation.

In making an agreement we should advise that a liberal scale be adopted. The Act of 1875, and the customs of the best counties, will afford the safest models. See also Form below.

The common condition that the tenant should not claim more than the average of the last three years for cake, &c., *seems* reasonable.

Conditions requiring tenants to give notice to their landlords before making Third Class improvements would run a grave risk of being held unreasonable; [a] even a condition that the manures should be subjected to previous analysis would not be free from risk.

The next point is, what is the tenant's remedy?

1. It is clear he may bring an action [b] and get an agreement which is not "fair, &c." declared void. [c] But there are obvious difficulties in the way of this remedy, and it would in many cases be far too expensive. If he does adopt it he should take care to bring his action in such good time that, if he succeeds in getting the

[a] The Act expressly describes Third Class improvements as those for which no notice is required. See Schedule. Also, several of these improvements *did* require notice in Act of 1875.

[b] Spence, 502.

[c] When we speak of the agreement as "void," it must be understood to mean "void so far as it deprives the tenant of his right to claim compensation."

agreement declared void, he may still have time to give his two months' notice under sect. 7.

2. But it is submitted (with some doubt) that he has a simpler and more efficacious remedy; and that he may treat it as void, and give his notices as though the agreement were non-existent.

If the landlord refuses to appoint a referee the tenant may still proceed with the reference, and it seems probable that the referees and umpire have jurisdiction to consider the agreement, and, if they think it proved not to be "fair, &c.," they should proceed to award compensation as though it did not exist.

It is submitted that the referees have jurisdiction on the following grounds:—

(1.) Sect. 23 (a) seems to imply it.

(2.) Convenience. If a landlord by inserting a clause in an agreement giving the tenant the lump sum of 5*s*., or a farthing an acre, compensation, and the jurisdiction of the referees is ousted until a court has set aside the agreement, the objects of the Act are partly frustrated.

(3.) Because the Act declares the agreement "void," not merely voidable.

A voidable agreement is valid until it is set aside, also it is capable of confirmation.

In *Widgery* v. *Pepper* (b), Vice-Chancellor Malins said: "Anybody who has studied the principles of law knows perfectly well, from Coke on Littleton, downwards, it is laid down that a void act cannot be confirmed, but a voidable act can."

In the Indian Contract Act, 1872, which is usually considered a masterpiece of scientific drafting, we are told that an agreement not enforceable by law is said to be void. An agreement enforceable by law is a contract. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract."

If the existence of the agreement prevents the referees from acting, it would be merely *voidable*.

It is no doubt true that, in many cases where Parliament has declared contracts to be *void*, the courts have decided that they are only *voidable*. But in the present case the object of the statute (c) is not merely to protect farmers as individuals, but to encourage improvements and insist on compensation. And it is submitted

(a) See page 69.
(b) 5 Ch. Div. 523.
(c) Compare Maxwell on Statutes, 190.

that this can only be effectually carried out if the words of the Legislature are to be construed in their natural sense, and an agreement which it has declared "void" shall be held to be so.

56. *Right of tenant in respect of improvement purchased from outgoing tenant.*—Where an incoming tenant has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, such incoming tenant shall be entitled on quitting the holding to claim compensation in respect of such improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted the holding at the time at which the incoming tenant quits the same.

This arrangement will be very commonly made in the case of limited owners; but the incoming tenant must take care to get the landlord's written consent, and, in case the holding is land which belongs to a church "living," the tenant must see that the patron *or* "Queen Anne's Bounty" signifies previous approval in writing to the landlord giving consent. See sect. 39, page 84. As to bishops' lands, see sect. 38, page 84.

It will be noticed that in the first instance it is the landlord and not the incoming tenant who is liable to pay the tenant's compensation, and this is in accordance with the law previous to the Act.(a)

The words "if at all" are inserted because in many cases an improvement which was unexhausted when the incoming tenant comes in will be exhausted before he goes out, and in such case of course he can obtain no compensation.

It will be necessary for the incoming tenant's safety that he should, before he pays over the money to the outgoing one, "investigate his title" to the improvements; in other words, he must see if any needful "consent" or "notice" has been given. Also he should take care to preserve all evidence which he will require,(b) when he in turn becomes an outgoing tenant and seeks

(a) *Bradburn* v. *Foley*, 3 C. P. Div. 129.

(b) See page 73.

to claim. If any "agreements" relating to compensation have been made between the landlord and the outgoing tenant, the incoming tenant should examine them, and in most cases he will be entitled to retain them.

57. *Compensation under this Act to be exclusive.*—A tenant shall not be entitled to claim compensation by custom or otherwise than in manner authorised by this Act in respect of any improvement for which he is entitled to compensation under or in pursuance of this Act, but where he is not entitled to compensation under or in pursuance of this Act he may recover compensation under any other Act of Parliament, or any agreement or custom, in the same manner as if this Act had not passed.

If the tenant can claim compensation "under or in pursuance[a] of" this Act, he may claim in no other way; *e.g.*, he cannot claim under a custom. But if he cannot claim under or in pursuance of the Act, he *may* claim in any way he can.

58. *Provision as to change of tenancy.*—A tenant who has remained in his holding during a change or changes of tenancy shall not thereafter on quitting his holding at the determination of a tenancy be deprived of his right to claim compensation in respect of improvements by reason only that such improvements were made during a former tenancy or tenancies, and not during the tenancy at the determination of which he is quitting.

This is for the benefit of the "sitting" tenant. It does not give him any compensation as long as he "sits." But it prevents him losing his rights, in consequence of any re-arrangement between him and his landlord as to rent or otherwise; which would amount in law to a change of tenancy, although as a matter of fact the tenant did not quit the holding.[b]

59. *Restriction in respect of improvements by tenant about to quit.*—Subject as in this section mentioned, a tenant shall

[a] See page 54, *note*.

[b] See pages 22, 44.

not be entitled to compensation in respect of any improvements other than manures as defined by this Act, begun by him, if he holds from year to year, within one year before he quits his holding, or at any time after he has given or received final notice to quit, and, if he holds as a lessee, within one year before the expiration of his lease.

A final notice to quit means a notice to quit which has not been waived or withdrawn, but has resulted in the tenant quitting his holding.

The foregoing provisions of this section shall not apply in the case of any such improvement as aforesaid—

(1.) Where a tenant from year to year has begun such improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord, has quitted his holding at the expiration of that year; and

(2.) Where a tenant, whether a tenant from year to year or a lessee, previously to beginning any such improvement, has served notice on his landlord of his intention to begin the same, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement.

This section looks very complicated, but its meaning is clear.

First, it does not apply to "manures," (*) so that a tenant who is about to quit may spread artificial manure and give cake as though this section did not exist.

And by sub-sect. (2) in any case the tenant can protect himself by serving the requisite notice. In the case of First Class improvements he would always have to ask for consent, and he would have to give "notice" for drainage, while for Third Class improvements no "consent" or "notice" is generally needed. Yet, if he is about to quit (within the meaning of this section), and wishes to make *any*

(*) Sect. 61, pages 8, 3.

improvement (except "manures"), it will be safest to serve this notice if he desires compensation. As to serving notice see sect. 28, page 72. The "assent" or "objection" of the landlord may be verbal, but it will be convenient that it should be written. "Month" means calendar month. "Lessee" includes lessee for lives, as well as lessee for years.

We shall proceed to consider only the case of Third Class improvements (other than manures) with regard to which the tenant has given no notice.

He will lose his compensation with regard to these in the following cases:

If he is a yearly tenant and begins the improvement within one year before he quits the holding, *except* in the cases falling within sub-sect. (1).

If he is a yearly tenant and he makes it after he has given, or received, "final notice to quit." The section defines this phrase.

If he is a lessee, if he begins it within a year of the expiration of the lease.

But by sub-sect. (1) a yearly tenant who begins an improvement during his last year, and *after* he has begun the improvement receives notice *from his landlord*, can claim.

The provision as to the lessee is plain enough; the "expiration" of the lease signifies that its full course must be run, so that this section has no application to a case of a lease which determines by forfeiture or otherwise before its last year.

And the provisions as to the yearly tenancy are intelligible if we remember that the length of notice required in a yearly tenancy is not always the same, and that the object of the qualifying provision (sub-sect. 1) is to protect the tenant in the case of the landlord giving him notice, but not in case of the tenant himself giving notice. The result is that a yearly tenant, who is not going to give notice himself, may safely commence an improvement if he has not received notice from his landlord. After he has received notice (whether the notice given is only just the legal length or given a good deal before the necessary time) he can make no new improvement, but may finish what he has begun.

If a yearly tenant who is entitled to give and receive only a half-year's notice instead of a year's, commences an improvement and gives notice a month or two afterwards, so as to quit within a year of his commencing the improvement, he will lose his compensation.

As to the case of a tenancy determining suddenly, see notes on sect. 7, page 53.

60. *General saving of rights.* — Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, waste emblements, tillages, away-going crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing.

This must be read with, and subject to, the express words of sect. 57, page 101.

As to saving of certain rights under the Act of 1875, see sect. 62, page 107.

61. *Interpretation.*—In this Act—

"Contract of tenancy" means a letting of or agreement for the letting land for a term of years, or for lives, or for lives and years, or from year to year:

A tenancy from year to year under a contract of tenancy current at the commencement of the Act shall for the purposes of this Act be deemed to continue to be a tenancy under a contract of tenancy current at the commencement of this Act until the first day on which either the landlord or tenant of such tenancy could, the one by giving notice to the other immediately after the commencement of this Act, cause such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act:

"Determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause:

"Landlord" in relation to a holding means any person

for the time being entitled to receive the rents and profits of any holding:

"Tenant" means the holder of land under a landlord for a term of years, or for lives, or for lives and years, or from year to year:

"Tenant" includes the executors, administrators, assigns, legatee, devisee, or next of kin, husband, guardian, committee of the estate or trustees in bankruptcy of a tenant, or any person deriving title from a tenant; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of such executors, administrators, assigns, and other persons as aforesaid:

"Holding" means any parcel of land held by a tenant:

"County Court," in relation to a holding, means the County Court within the district whereof the holding or the larger part thereof is situate:

"Person" includes a body of persons and a corporation aggregate or sole:

"Live stock" includes any animal capable of being distrained:

"Manures" means any of the improvements numbered twenty-two and twenty-three in the third part of the first schedule hereto:

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

The long explanation about a tenancy from year to year is important with reference to sect. 5, see pages 38-40.

As to "determination of tenancy," see notes to sect. 7, page 53.

As to "landlord" and "tenant," see page 26.

Observe the definition of the word "tenant" by means of which the transmission of the right to compensation is secured.

For summary of powers of County Court, see page 61.

In the case of separate examination of a married woman, the County Court of the district where she happens to be has the jurisdiction: see sect. 26, page 71.

The term "live stock" is used in sects. 45, 46, pages 91, 93.

The term "manures" is used in sects. 6 (*b*) 59, pages 48, 102.

The Act also contains a definition of the phrase "final notice to quit" in sect. 59, page 102, and of the word "patron" in sect. 39, page 84.

Sect. 4 of the 13 & 14 Vict. c. 21 (commonly called and known either as Lord Brougham's or Lord Romilly's Act), enacts, that in all Acts words importing the masculine gender shall be deemed and taken to include females;

And the singular to include the plural;

And the plural the singular, unless the contrary as to gender or number is expressly provided;

And the word "month" to mean calendar month, unless words be added showing lunar month to be intended;

And "county" shall be held to mean also county of a town or of a city, unless such extended meaning is expressly excluded by words;

And the word "land" shall include messuages, tenements, and hereditaments, houses and buildings of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure;

And the words "oath," "swear," and "affidavit," shall include affirmation, declaration, affirming, and declaring, in the case of persons allowed by law to declare instead of swearing.

62. *Repeal of Acts of* 1875 *and* 1876.—On and after the commencement of this Act, the Agricultural Holdings (England) Act, 1875, (a) and the Agricultural Holdings (England) Act, 1875, Amendment Act, 1876, (b) shall be repealed.

Provided that such repeal shall not affect—

(*a.*) anything duly done or suffered, or any proceedings

(a) 38 & 39 Vict. c. 92. | (b) 39 & 40 Vict. c. 74.

pending under or in pursuance of any enactment hereby repealed; or

(*b.*) any right to compensation in respect of improvements to which the Agricultural Holdings (England) Act, 1875, applies, and which were executed before the commencement of this Act; or

(*c.*) any right to compensation in respect of any improvement to which the Agricultural Holdings (England) Act, 1875, applies, although executed by a tenant after the commencement of this Act if made under a contract of tenancy current at the commencement of this Act; or

(*d.*) any right in respect of fixtures affixed to a holding before the commencement of this Act;

and any right reserved by this section may be enforced after the commencement of this Act in the same manner in all respects as if no such repeal had taken place.

The commencement of the Act is January 1, 1884. The Act of 1875 will be found in the Appendix.

With respect to sub-sect. (*b*), we may refer to sect. 2, p. 29. Sect. 2 gives no compensation in cases where the tenant is entitled under the Act of 1875, consequently this sub-section retains the tenant's right under the old Act.

Sub-sect. (*c*) relates to cases where "specific compensation" was given under the old Act, and consequently the new Act does not give compensation, and sect. 5 (a) declares the compensation under the old Act "to be substituted" for compensation under the new. As to substituted compensation, see sects. 17, 55, pages 64, 96. and consider the last three lines of the present section.

Sub-sect. (*d*) is needful because sect. 34 (b) only applies to fixtures affixed after December 31, 1883.

The Act of 1876 merely amended sect. 49 of the Act of 1875 with reference to the consent required to the exercise of the powers of a landlord by an incumbent of an ecclesiastical benefice. See note to sect. 49 of the Act of 1875, below, pages 124, 125.

(a) Page 38. | (b) Page 80.

63. *Short title of Act.*—This Act may be cited for all purposes as the Agricultural Holdings (England) Act, 1883.

64. *Limits of Act.*—This Act shall not apply to Scotland or Ireland.

The corresponding Act for Scotland is 46 & 47 Vict. c. 62.

FIRST SCHEDULE. [a]

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED. [b]

(1.) Erection or enlargement of buildings.
(2.) Formation of silos.
(3.) Laying down of permanent pasture.
(4.) Making and planting of osier beds.
(5.) Making of water meadows or works of irrigation.
(6.) Making of gardens.
(7.) Making or improving of roads or bridges.
(8.) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
(9.) Making of fences.
(10.) Planting of hops.
(11.) Planting of orchards or fruit bushes.
(12.) Reclaiming of waste land.
(13.) Warping of land.
(14.) Embankment and sluices against floods.

PART II.

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED. [c]

(15.) Drainage.

PART III.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS NOT REQUIRED.

(16.) Boning of land with undissolved bones.
(17.) Chalking of land.
(18.) Clay-burning.
(19.) Claying of land.

(a) See pages 1-3, 41.
(b) See sect. 3, page 32.
(c) See sect. 4, page 35.

(20.) Liming of land.
(21.) Marling of land. [a]
(22.) Application to land of purchased artificial or other purchased manure. [b]
(23.) Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding. [b]

SECOND SCHEDULE. [c]

Levying distress. Three per centum on any sum exceeding 20*l.* and not exceeding 50*l.* Two and a half per centum on any sum exceeding 50*l.*

To bailiff for levy, 1*l.* 1*s.*

To man in possession, if boarded, 3*s.* 6*d.* per day; if not boarded, 5*s.* per day.

For advertisements, the sum actually paid.

To auctioneer. For sale five pounds per centum on the sum realised not exceeding 100*l.*, and four per centum on any additional sum realised not exceeding 100*l.*, and on any sum exceeding 200*l.* three per centum. A fraction of 1*l.* to be in all cases considered 1*l.*

Reasonable costs and charges where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress; such costs and charges in case the parties differ to be taxed by the registrar of the County Court of the district in which the distress is made.

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[a] Page 22.
[b] (22) and (23) are called "manures," sect. 61, page 105. See as to these, sects. 6 (*b*), 59, pages 48, 102.
[c] Sect. 49, page 94.

CHAPTER V.

MODERN AGRICULTURAL LEASES.

In the last few years a very great change has taken place with respect to farming. The old difficulty was to find a farm; the present one is to find a tenant willing and able to pay a satisfactory rent. And this, together with the requirements of modern agriculture, necessitates considerable alterations in the old-established forms of drawing leases. A complaint, perhaps not altogether groundless, has arisen, that the Legal Profession has not quite kept pace with the times, and that leases and agreements for tenancy still contain restrictions which impoverish the tenant without enriching either land or landlord. We propose, therefore, briefly to indicate some of the more important points in which we would suggest modifications of the highly respectable forms which have hitherto generally obtained. We shall assume that the farm is let on a Michaelmas take, which is certainly the best plan. The main object of the landlord is to get his rent, and, to enable him to do this, he must allow a great deal more freedom to his tenant. It is almost as unreasonable to tie down a tenant to one particular mode of farming as to let a shop or a manufactory, and to compel the tenant, not merely to use the demised premises for some particular business, but to carry it on in some particular way. Hence, though of course the tenant should be bound to cultivate the farm according to the rules of good husbandry, to keep it clean, apply manure, &c., he should not be bound to any particular mode of cropping, or rotation of crops, except perhaps in the last few years of the tenancy.

The old simplicity of the Teutonic three-field system gave

way to the four-course system; but in some districts a five-course is better, and there is no need to prevent improvements by laying down one uniform rule. We notice that in the Scotch lease of the Duke of Richmond and Gordon,(*) which was recently published, the tenant is allowed to pursue any system of cropping he thinks fit, except during the last four years of the tenancy. So in the regulations of the Queensberry estate,(*) which were issued a year or two ago, freedom of cropping was given, but the permission of the proprietor or his factor was required, and the permission was revocable. Also three white crops in succession were forbidden under a heavy penalty. No doubt the practical effect was that liberty was given to good tenants. In an agreement for a yearly tenancy now before us, which was prepared for an estate in an English midland county, the tenant is not restricted to any particular system, but one-tenth of the arable land is to be in clover or seeds, not more than two white straw crops are to be sown in succession (rye grass or vetches seeded to be computed as a white straw crop), and more stringent provisions are made for the last year of the tenancy. The general principle then is liberty of cropping, subject to a restriction as to white crops, and to special restrictions towards the determination of the tenancy.

Next in order to the mode of cultivation we must consider restrictions on the free sale—not of the land—but of the crops which are to produce the rent. In some leases, which are excellently drawn for every purpose except enabling the tenant to live and pay rent, there is a prohibition against selling "hay, straw, fodder, root and green crops," and the tenant is required to expend them on the premises. This is now absurd, except as to the produce in the last year or years of the tenancy. Straw is now of considerable value, and hay may often be sold to the greatest advantage, and the cart that carries hay into the neighbouring town will bring back

(*) These leases were made before the English and Scotch Agricultural Holdings Acts of 1883.

APPENDIX.

AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1875.

38 & 39 VICT. c. 92.

An Act for amending the Law relating to Agricultural Holdings in England. (a)—[*13th August*, 1875.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. *Short title.*—This Act may be cited as "The Agricultural Holdings (England) Act, 1875."

2. *Commencement of Act.*—This Act shall commence from and immediately after the fourteenth day of February one thousand eight hundred and seventy-six.

3. *Extent of Act.*—This Act shall not extend to Scotland or Ireland.

[This is the same as sect. 64 of the new Act, page 108.]

4. *Interpretation.*—In this Act—

"Contract of tenancy" means a letting of land for a term of years or for lives, or for lives and years, or from year to year, or at will:

"Determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause:

"Landlord" means the person for the time being entitled to possession of land subject to a contract of tenancy, or entitled to receipt of rent reserved by a contract of tenancy, whatever be the extent of his interest, and although the land or

(a) Subject to certain savings and exceptions, this Act will be repealed after the 31st December, 1883. See sect. 62 of the new Act, page 106.

his interest therein is incumbered or charged by himself or his settlor, or otherwise, to any extent; the party to a contract of tenancy under which land is actually occupied being alone deemed to be the landlord in relation to the actual occupier:

"Tenant" means the holder of land under a contract of tenancy:

"Landlord" or "tenant" includes the agent authorised in writing to act under this Act generally, or for any special purpose, and the executors, administrators, assigns, husband, guardian, committee of the estate, or trustees in bankruptcy, of a landlord or tenant:

"Holding" includes all land held by the same tenant of the same landlord for the same term under the same contract of tenancy:

"Absolute owner" means the owner or person capable of disposing, by appointment or otherwise, of the fee simple or whole interest of or in freehold, copyhold, or leasehold land, although the land or his interest therein is mortgaged, incumbered, or charged to any extent:

"County Court," in relation to a holding, means the County Court within the district whereof the holding or the larger part thereof is situate:

"Person" includes a body of persons and a corporation aggregate or sole:

The designations of landlord and tenant shall, for the purposes of this Act, continue to apply to the parties to a contract of tenancy until the conclusion of any proceedings taken under this Act on the determination of the tenancy.

[Compare definitions in sect. 61 of the Act of 1883, page 104.]

Compensation.

5. *Tenant's title to compensation.*—Where, after the commencement of this Act, a tenant executes on his holding an improvement comprised in either of the three classes following:

FIRST CLASS.

15. Drainage of land.
1. Erection or enlargement of buildings.
3. Laying down of permanent pasture.
4. Making and planting of osier beds.
5. Making of water meadows or works of irrigation.

FIRST CLASS—*Continued.*

6. Making of gardens.	agricultural or domestic purposes.
7. Making or improving of roads or bridges.	9. Making of fences.
8. Making or improving of watercourses, ponds, wells, or reservoirs, or of works for supply of water for	10. Planting of hops.
	11. Planting of orchards.
	12. Reclaiming of waste land.
	13. Warping of land.

SECOND CLASS.

16. Boning of land with undissolved bones.	19. Claying of land.
	20. Liming of land.
17. Chalking of land.	21. Marling of land.
18. Clay burning.	

THIRD CLASS.

22. Application to land of purchased artificial or other purchased manure.	by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.
23. Consumption on the holding	

he shall be entitled, subject to the provisions of this Act, to obtain, on the determination of the tenancy, compensation in respect of the improvement. [All the above improvements are recognised in the Act of 1883, which we shall call the "New Act," but they are differently classified. They are not numbered in the Act of 1875, but we have affixed the numbers which they bear in the first schedule to the new Act. See page 108, and compare page 41.]

6. *Time in which improvement exhausted.*—An improvement shall not in any case be deemed, for the purposes of this Act, to continue unexhausted beyond the respective times following after the year of tenancy in which the outlay thereon is made:

Where the improvement is of the First Class, the end of twenty years:

Where it is of the Second Class, the end of seven years:

Where it is of the Third Class, the end of two years.

7. *Amount of tenant's compensation in First Class.*—The amount of the tenant's compensation in respect of an improvement of the First Class shall, subject to the provisions of this Act, be the sum laid out by the tenant on the improvement, with a deduction of a proportionate part thereof for each year while the tenancy endures after the year of tenancy in which the outlay is made and while the improve-

ment continues unexhausted; but so that where the landlord was not, at the time of the consent given to the execution of the improvement, absolute owner of the holding for his own benefit, the amount of the compensation shall not exceed a capital sum fairly representing the addition which the improvement, as far as it continues unexhausted, at the determination of the tenancy, then makes to the letting value of the holding.

8. *Amount of tenant's compensation in Second Class.*—The amount of the tenant's compensation in respect of an improvement of the Second Class shall, subject to the provisions of this Act, be the sum properly laid out by the tenant on the improvement, with a deduction of a proportionate part thereof for each year while the tenancy endures after the year of tenancy in which the outlay is made and while the improvement continues unexhausted.

9. *Amount of tenant's compensation in Third Class.*—The amount of the tenant's compensation in respect of an improvement of the Third Class shall, subject to the provisions of this Act, be such proportion of the sum properly laid out by the tenant on the improvement as fairly represents the value thereof at the determination of the tenancy to an incoming tenant.

10. *Consent of landlord for First Class.*—The tenant shall not be entitled to compensation in respect of an improvement of the First Class, unless he has executed it with the previous consent in writing of the landlord.

11. *Deduction in First Class for want of repair, &c.*—In the ascertainment of the amount of the tenant's compensation in respect of an improvement of the First Class, there shall be taken into account, in reduction thereof, any sum reasonably necessary to be expended for the purpose of putting the same into tenantable repair or good condition.

12. *Notice to landlord for Second Class.*—The tenant shall not be entitled to compensation in respect of an improvement of the Second Class, unless not more than forty-two and not less than seven days before beginning to execute it, he has given to the landlord notice in writing of his intention to do so, nor where it is executed after the tenant has given or received notice to quit, unless it is executed with the previous consent in writing of the landlord.

13. *Exclusion of compensation in Third Class after exhausting crop.*—The tenant shall not be entitled to compensation in respect of an improvement of the Third Class, where, after the execution thereof, there has been taken from the portion of the holding on which the

same was executed, a crop of corn, potatoes, hay, or seed, or any other exhausting crop.

14. *Exclusion of compensation for consumption of cake, &c., in certain cases.*—The tenant shall not be entitled to compensation in respect of an improvement of the Third Class, consisting in the consumption of cake or other feeding stuff, where, under the custom of the country or an agreement, he is entitled to and claims payment from the landlord or incoming tenant in respect of the additional value given by that consumption to the manure left on the holding at the determination of the tenancy.

15. *Restrictions as to Third Class.*—In the ascertainment of the amount of compensation in respect of an improvement of the Third Class,—

(1.) There shall not be taken into account any larger outlay during the last year of the tenancy than the average amount of the tenant's outlay for like purposes during the three next preceding years of the tenancy, or other less number of years for which the tenancy has endured; and

(2.) There shall be deducted the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off the holding within the last two years of the tenancy or other less time for which the tenancy has endured, except as far as a proper return of manure to the holding has been made in respect of such produce sold off.

16. *Deductions from compensation for taxes, rent, &c.*—The amount of the tenant's compensation shall be subject to the following deductions:

(1.) For taxes, rates, and tithe rentcharge due or becoming due in respect of the holding to which the tenant is liable as between him and the landlord:

(2.) For rent due or becoming due in respect of the holding:

(3.) For the landlord's compensation under this Act.

17. *Set-off of benefit to tenant.*—In the ascertainment of the amount of the tenant's compensation there shall be taken into account in reduction thereof any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement.

18. *Tenant's compensation for breach of covenant.*—Where a landlord commits a breach of covenant or other agreement connected with the contract of tenancy, and the tenant claims under this Act compensation in respect of an improvement, then the tenant shall be

entitled to obtain, on the determination of the tenancy, compensation in respect of the breach, subject and according to the provisions of this Act.

19. *Landlord's title to compensation.*—Where a tenant commits or permits waste, or commits a breach of a covenant or other agreement connected with the contract of tenancy, and the tenant claims compensation under this Act in respect of an improvement, then the landlord shall be entitled, by counter-claim, but not otherwise, to obtain, on the determination of the tenancy, compensation in respect of the waste or breach, subject and according to the provisions of this Act.

But nothing in this section shall enable a landlord to obtain under this Act compensation in respect of waste or a breach committed or permitted in relation to a matter of husbandry more than four years before the determination of the tenancy.

[Compare with the last four sections, sect. 6 of the new Act, page 48.]

Procedure.

20. *Notice of intended claim.*—Notwithstanding anything in this Act, a tenant shall not be entitled to compensation under this Act unless one month at least before the determination of the tenancy he gives notice in writing to the landlord of his intention to make a claim for compensation under this Act.

Where a tenant gives such a notice the landlord may, before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim for compensation under this Act.

Every such notice and counter-notice shall state, as far as reasonably may be, the particulars of the intended claim.

[Compare sect. 7 of the new Act, page 53.]

21. *Compensation agreed or settled by reference.*—The landlord and the tenant may agree on the amount and mode and time of payment of compensation to be paid to the tenant or to the landlord under this Act.

If in any case they do not so agree the difference shall be settled by a reference.

[Compare sect. 8 of the new Act, page 56.]

22. *Appointment of referee or referees and umpire.*—[This is identical with sect. 9 of the new Act, page 57, except that, in sub-sect. (9), "aplication" is now properly spelt.]

23. *Requisition for appointment of umpire by Inclosure Commissioners, &c.*—[This is identical with sect. 10 of the new Act, except that the "Land Commissioners for England" are now substituted for the Inclosure Commissioners for England and Wales. See page 59.]

24. *Exercise of powers of County Court.*—[This is identical with sect. 11 of the new Act, page 60.]

25. *Mode of submission to reference.*—[This is identical with sect. 12 of the new Act, page 61.]

26. *Power for referee, &c., to require production of documents, administer oaths, &c.*—This is identical with sect. 13 of the new Act, page 62.]

27. *Power to proceed in absence.*—[This is identical with sect. 14 of the new Act, page 62.]

28. *Form of award.*—[This is identical with sect. 15 of the new Act, page 63.]

29. *Time for award of referee or referees.*—This is identical with sect. 16 of the new Act, page 63.]

30. *Reference to and award by umpire.*—[This is identical with sect. 18 of the new Act, page 65. Sect. 17 of the new Act is new.]

31. *Duration of improvement to be found.*—The award shall find and state the time at which each improvement, in respect whereof compensation is awarded, is taken, for the purposes of the award, to be exhausted.

32. *Award to give particulars.*—The award shall not award a sum generally for compensation, but shall, as far as reasonably may be, specify—

The several improvements, acts, and things in respect whereof compensation is awarded;

The time at which each thereof was executed, committed, or permitted;

In the case of an improvement of the First Class, where the landlord was not at the time of the consent given to the execution thereof absolute owner of the holding for his own benefit, the extent to which the improvement adds to the letting value of the holding;

The sum awarded in respect of each improvement, act, or thing; and

The sum laid out by the tenant on each improvement.

[The last two sections should be compared with sect. 19 of the new Act, page 66.]

33. *Costs of reference.*—[This is identical with sect. 20 of the new Act, page 67.]

34. *Day for payment.*—[This is identical with sect. 21 of the new Act, page 68.]

35. *Submission not to be removable, &c.*—[This is identical with sect. 22 of the new Act, page 68.]

36. *Appeal to County Court.*—Where the sum claimed for compensation exceeds fifty pounds, either party may, within seven days after delivery of the award, appeal against it to the judge of the County Court on all or any of the following grounds:

1. That the award is invalid;
2. That compensation has been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation;
3. That compensation has not been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation;

and the judge shall hear and determine the appeal, and may [the rest of the section is identical with the corresponding part of sect. 23 of the new Act, page 68.]

37. *Recovery of compensation.*—[This is identical with sect. 24 of the new Act, page 70.]

38. *Appointment of guardian.*—[This is identical with sect. 25 of the new Act, page 71.]

39. *Provisions respecting married women.*—The County Court may appoint a person to act as the next friend of a married woman for the purposes of this Act, and may remove or change that next friend if and as occasion requires.

A married woman entitled for her separate use, and not restrained from anticipation, shall, for the purposes of this Act, be in respect of land as if she was unmarried.

Where any other married woman is desirous of doing any act under this Act, her husband's concurrence shall be requisite, and she shall be examined apart from him by the County Court, or by the judge of the County Court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

[This section should be compared with sect. 26 of the new Act, page 71.]

40. *Costs in County Court.*—[This is identical with sect. 27 of the new Act, page 72.]

41. *Service of notice, &c.*—[This is identical with sect. 28 of the new Act, page 72.]

Charge of Tenant's Compensation.

42. *Power for landlord, on paying compensation, to obtain charge.*—A landlord, on paying to the tenant the amount of compensation due to him under this Act, may obtain from the County Court a charge on the holding in respect thereof.

The court shall have power, on proof of the payment, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this Act, to make an order charging the holding with repayment of the amount paid, or any part thereof, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the court thinks fit.

But, where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, for the purposes of this Act, be taken to be exhausted.

The instalments and interest shall be charged in favour of the landlord, his executors, administrators, and assigns.

[This section should be compared with sect. 29 of the new Act, page 73.]

43. *Advance made by a company for the improvement of land.*—[This is identical with sect. 32 of the new Act, page 78.]

44. *Duration of charge.*—The sum charged by the order of a County Court under this Act shall be a charge on the holding for the landlord's interest therein, and for all interests therein subsequent to that of the landlord; but so that the charge shall not extend beyond the landlord's interest where the landlord is himself a tenant of the holding.

[This section should be compared with sect. 30 of the new Act, page 76.]

Crown and Duchy Lands.

45. *Application of Act to Crown lands.*—This Act shall extend and apply to land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown.

With respect to such land, for the purposes of the Act, the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them, or other the proper officer or body having charge of such land for the time being, or in case there is no such officer or body, then such person as Her Majesty, her heirs or successors, may appoint in writing under the Royal Sign Manual, shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

Any compensation payable under this Act by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or either of them, in respect of an improvement of the First Class, shall be deemed to be payable in respect of an improvement of land within section one of the Crown Lands Act, 1866, and the amount thereof shall be charged and repaid as in that section provided with respect to the costs, charges, and expenses therein mentioned.

Any compensation payable under this Act by those Commissioners or either of them, in respect of an improvement of the Second Class, or of the Third Class, shall be deemed to be part of the expenses of the management of the Land Revenues of the Crown, and shall be payable by those Commissioners out of such money and in such manner as the last-mentioned expenses are by law payable.

46. *Application of Act to land of Duchy of Lancaster.*—This Act shall extend and apply to land belonging to Her Majesty, her heirs and successors, in right of the Duchy of Lancaster.

With respect to such land, for the purposes of this Act, the Chancellor for the time being of the Duchy shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement of the First Class shall be deemed to be an expense incurred in improvement of land belonging to Her Majesty, her heirs or successors, in right of the Duchy, within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven, and shall be raised and paid as in that section provided with respect to the expenses therein mentioned.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement of the Second Class or of the Third Class shall be paid out of the annual revenues of the Duchy.

The amount of any compensation payable under this Act to the

Chancellor of the Duchy shall be paid into the hands of the Receiver-General of the revenues of the Duchy, or of his sufficient deputy or deputies; and receipts shall be given by him or them for the same; and the same shall be applied as purchase money for land sold under the Duchy of Lancaster Lands Act, 1855, is applicable under section two of that Act.

47. *Application of Act to land of Duchy of Cornwall.*—This Act shall extend and apply to land belonging to the Duchy of Cornwall.

With respect to such land, for the purposes of this Act, such person as the Duke of Cornwall for the time being, or other the personage for the time being entitled to the revenues and possessions of the Duchy of Cornwall, from time to time, by sign manual, warrant, or otherwise, appoints, shall represent the Duke of Cornwall, or other the personage aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder.

Any compensation payable under this Act by the Duke of Cornwall, or other the personage aforesaid, in respect of an improvement of the First Class, shall be deemed to be payable in respect of an improvement of land within section eight of the Duchy of Cornwall Management Act, 1863, and the amount thereof may be advanced and paid from the money mentioned in that section, subject to the provision therein made for repayment of sums advanced for improvements.

[The last three sections should be compared with sects. 35-37 of the new Act, pages 81-83.]

Ecclesiastical and Charity Lands.

48. *Landlord, archbishop or bishop.*—[This is identical with sect. 38 of the new Act, page 84.]

49. *Landlord, incumbent of benefice.*—Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing [of the patron of the benefice (that is, the person, officer, or authority who, in case the benefice were vacant, would be entitled to present thereto) or] of the Governors of Queen Anne's Bounty (that is, the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy).

In every such case the Governors of Queen Anne's Bounty may,

if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him under this Act; and thereupon they may, instead of the incumbent, obtain from the County Court a charge on the holding, in respect thereof, in favour of themselves.

Every such charge shall be effectual, notwithstanding any change of the incumbent.

The Governors of Queen Anne's Bounty, before granting their approval in any case under this section, shall give notice of the application for their approval to the patron of the benefice (that is, the person, officer, or authority who, in case the benefice were then vacant, would be entitled to present thereto.

[The Agricultural Holdings Act of 1876 (39 & 40 Vict. c. 74) amended the Act of 1875 by inserting the words which we have put in square brackets, and omitting those which we have put in italics. This section should be compared with sect. 39 of the new Act, page 84.]

50. *Landlord, charity trustees, &c.*—The powers by this Act conferred on a landlord shall not be exercised by trustees for ecclesiastical or charitable purposes except with the previous approval in writing of the Charity Commissioners for England and Wales.

[This section should be compared with sect. 40 of the new Act, page 86.]

Notice to quit.

51. *Time of notice to quit.*—Where a half-year's notice, expiring with a year of tenancy, is by law necessary and sufficient for determination of a tenancy from year to year, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.

[This section should be compared with sect. 33 of the new Act, page 78.]

Resumption for Improvements.

52. *Resumption of possession for cottages, &c.*—[This is identical with sect. 41 of the new Act, page 86, except that the latter includes "railway" among the improvements, and this does not.]

Fixtures.

53. *Tenant's property in fixtures, machinery, &c.*—Where after the commencement of this Act a tenant affixes to his holding any engine,

59. *Exception where other compensation.*—A tenant shall not be entitled to claim compensation under this Act and under any custom of the country or contract in respect of the same work or thing.

[Compare this with sect. 57 of the new Act, page 101].

60. *General saving of rights.*—[This is identical with sect. 60 of the new Act, page 104, except that this employs the word "improvement" where the new Act has the word "improvements."]

CUSTOM (Note to page 30).

THE "custom of the country," under which farmers claim, is something quite distinct from *immemorial* custom, such as is explained in Stephen's Commentaries, 8th ed., pp. 64-67 A right of a clergyman to an ordinary burial or marriage fee is an example of a claim by immemorial custom. It exists by virtue of what may be fairly styled the *local* common law.

But the custom of the country, like a trade custom, is founded on an implied contract. Landlord and tenant are supposed to know the custom of the neighbourhood, and unless they exclude the custom by the express terms of their agreement, or by implication therefrom, they will be bound by it. But a custom which only obtains on a particular property is not binding on the tenant, unless he has notice of it when he becomes tenant. See notes to *Wigglesworth* v. *Dallison* (1 Smith L.C. 599). In that case it was held that a custom that the tenant, whether by parol or deed, shall have the way-going crop, after the expiration of his term, is good, if not repugnant to the lease by which he holds: (*Wigglesworth* v. *Dallison*, *ubi sup.*)

The following case, recently decided by the House of Lords, illustrates the effect of "custom:" A farm was let under a written agreement, reserving to the landlord "all mines and minerals, sand, quarries of stone, brick earth, and gravel pits." A local custom (which, it was suggested, had grown up within the last thirty or forty years) allowed tenants of such farms, let with a similar reservation, to take away the flints that were turned up in the ordinary course of good husbandry, and to sell them for their own benefit. If the flints were not turned up and removed, such farms could not be properly cultivated.

Held, affirming the decision of the Court of Appeal, that the custom was reasonable and valid; and when read into the written agreement was not inconsistent with the reservation, even assuming (but without deciding) that the reservation of "mines and minerals" included such flints: (*Tucker* v. *Linger*, 8 App. Cas. 508; affirming, 21 Ch. Div. 18; 46 L. T. Rep. N. S. 198.)

In *Wood* v. *Baxter* (49 L. T. Rep. N. S. 45) it was proved that it

was the custom of the country, a district in Kent, to consume straw on the farm, but that the tenant might sell straw if he brought back an equivalent in manure, and that the manure has to be brought back after the sale of the straw.

Mr. Justice Williams remarked on this case: "Although no doubt it was not a condition precedent to the right of the tenant to sell the straw that he should bring an equivalent in manure—that was to be done afterwards—yet I think that it was a condition precedent to the right that the tenant should be ready and willing to replace the straw by the manure, and that if at the close of the term the tenant became insolvent, and was about to leave, and there was no possibility of his replacing the straw by manure, he would not be entitled to sell it."

A committee of the "Central and Associated Chambers of Agriculture" issued three reports, &c., showing what are the customs of most of the counties of England, dated November 4, 1873; March 3, 1874; June 2, 1874. Considerable information is also given in a prize essay on "Farm Covenants and Customs," by Mr. C. Cadle, in the Journal of the Royal Agricultural Society for 1868. An epitome, founded partly on the above works, is contained in Cooke's Agricultural Tenancies, edit. 1882, pp. 79-153. See also the last edition of Woodfall.

Reference may also be made to the reports of the recent Royal Commission on Agriculture. See especially the Digests of Minutes of Evidence and the Reports of the Assistant Commissioners, Messrs. Druce, Coleman, Little, &c., in reports of 1881, vol. xvi. [c. 2778—II]. Forms for letting garden allotments will be found at p. 359.

COVENANTS RUNNING WITH THE LAND
(Note to page 34).

We say that *generally* covenants made by a man bind only himself and his representatives, but this is otherwise with respect to covenants running with the land, *i.e.*, "those which touch and concern the thing demised." As to such covenants between landlord and tenant, see 32 Hen. 8, c. 34, and *Spencer's case* (1 Smith, L. C. 68-79); Shirley, L. C. 83; Woodfall, 147; Davidson, vol. i. 126-136. Leases not under seal were not under the statute, but often, after an

assignment and acceptance of rent, &c., it was held that the parties had consented to go on upon the old terms.

With respect to leases made after December 31st, 1881, see Conveyancing Act, 1881, sects. 10-12.

Sometimes also a remainderman or succcssor, not being an assign of the previous landlord, has been (under circumstances) held bound by his covenants or agreements touching the land.

The following case, decided before the Act of 1883, is noteworthy:—

An owner in fee demised a farm for seven years, and agreed at the expiration of the term to pay for the tenant's property in and upon the farm at a valuation. He devised the land to trustees for a term of one thousand years upon trust, to raise money in aid of his personal estate for payment of debts, funeral and testamentary expenses, and legacies, and subject thereto to the plaintiff for life, with divers remainders over. On the testator's death the plaintiff took possession. On the expiration of the term a new tenant could not be found. The plaintiff paid the outgoing tenant for his property in the farm, and claimed to be repaid the amount out of the testator's estate:

Held, that the liability to pay the outgoing tenant was a liability attaching to the land, and that the landlord for the time being was the person primarily liable; that the plaintiff, being in rece pt of the rents and profits, was the landlord, and not the trustee o the term; that he therefore was the person primarily liable, and had no claim to be repaid, wholly or in part, either out of the testator's estate or by the persons entitled in remainder: (*Mansel* v. *Norton*, 22 Ch. Div. 769; 48 L. T. Rep. N. S. 654.)

WASTE AND CULTIVATION (Note to page 51).

As to waste see Woodfall, 566; Fish. Dig. 8582. It is not waste at common law, either wilful or permissive, to leave the land uncultivated (*Hutton* v. *Warren*, 1 M. & W. 472), but it is usually bad husbandry. It is waste not to repair fences: (*Chatham* v. *Hampson*, 4 T. R. 318.) An action lies against a tenant for years after the expiration of his term for *committing* waste. In many cases an injunction may be obtained. As to waste with regard to trees, see Woodfall, 580; Fish. Dig. 8314-8321; *Honeywood* v. *Honeywood* (30

L. T. Rep. N. S. 674; L. Rep. 18 Eq. 306). As to liability for *permitting* waste, see *Woodhouse* v. *Walker* (5 Q. B. Div. 406).

There is an implied obligation on the tenant to cultivate the farm according to the rules of good husbandry: (Woodfall, 564.)

As to whether there can be "waste" when no damage (either pecuniary or other) is done, see *Jones* v. *Chappell* (L. Rep. 20 Eq. 539), and remarks of Mr. Justice Kay in *Tucker* v. *Linger* (46 L. T. Rep. N. S. 198, 201).

STAMPS ON AWARDS under the Stamp Act, 1870, 33 & 34 Vict. c. 97 (Note to page 63).

Where the amount or value of the matter in dispute	£	*s.*	*d.*
does not exceed £5	0	0	3
Exceeds £5 and does not exceed £10	0	0	6
„ 10 „ „ 20	0	1	0
„ 20 „ „ 30	0	1	6
„ 30 „ „ 40	0	2	0
„ 40 „ „ 50	0	2	6
„ 50 „ „ 100	0	5	0
„ 100 „ „ 200	0	10	0
„ 200 „ „ 500	0	15	0
„ 500 „ „ 750	1	0	0
„ 750 „ „ 1,000	1	5	0
And where it exceeds 1,000, and in any other case not provided for.....	1	15	0

COMMUNICATION FROM THE LAND OFFICE (Note to sect. 10, page 59).

In reply to an inquiry it was stated that the procedure of the Land Commissioners was not yet (Oct. 19, 1883) definitely settled, but no doubt a moderate office fee would be charged.

COMMUNICATION FROM QUEEN ANNE'S BOUNTY OFFICE (Note to sect. 39, page 84).

In reply to inquiry it was stated "that under the old Act of 1875, the only powers exercised by the Governors were to assent to notices under sect. 57, by incumbents to their tenants, for which no fee was charged, and that since the passing of the Amendment Act of the following year they have uniformly declined to take any action whatever under the Act."

The "Amendment Act" was the Act of 1876: see pages 124, 125.

It will be noticed that the alteration made by the Amendment Act forms part of the present statute, so probably the Bounty Office will usually leave matters in the hands of the patrons where they are able to act; it is to be hoped, however, that where the patron is unable to act, or there is a difficulty in ascertaining who is the "patron" within the meaning of this statute, the Governors will not hesitate to use their powers.

Often the incumbent will find it well to get the patron's approval to an *agreement*.

FORMS AND PRECEDENTS.

(For list see Table of Contents at the beginning of the Volume.)

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1. CONSENT BY LANDLORD TO IMPROVEMENT MADE BEFORE THE ACT.

[*Date.*]

SIR,—I hereby give my consent to the following improvements made by you on the Holt Farm, within ten years previous to January 1st, 1884, namely: [*Here describe the improvements, as,* erection of a pigstye in the back yard, and of a cowshed in the home field; planting Big Close as an orchard.]

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

See sect. 2, pages 29, 32. Observe that this consent, to be effectual, must be given during the year 1884.

It is necessary only for First Class improvements and drainage; but it would be useful for Third Class ones as an *admission* by the landlord that they were made. We have given a very short form of consent, but it would be a great advantage to the tenant if the landlord would state dates of the improvements and other particulars. It will not be safe to rely on any consent given by an agent as to improvements made before the Act.

It would be advisable, to save trouble afterwards in proof, to have all notices, forms, and agreements—if important—attested by a witness.

2. APPLICATION BY TENANT TO LANDLORD FOR CONSENT TO FIRST CLASS IMPROVEMENT.

[*Date.*]

SIR,—I write to ask your consent in writing to the following improvement which I propose to make on the Holt Farm, under the Agricultural Holdings (England) Act, 1883, viz.: [*Here describe the improvements, as,* erection of a stable built of brick, to accommodate six horses; *or,* laying down of the eight acre piece in permanent pasture; *or,* making and

planting an osier bed in the north-east portion of Rushy Meadow].

[*Signed*] C. D. [*tenant.*]

To A. B. [*landlord.*]

This application need not be in writing, but it is convenient that it should be.

3. ABSOLUTE CONSENT BY LANDLORD TO THE MAKING OF FIRST CLASS IMPROVEMENT BY TENANT.

[*Date.*]

SIR,—I hereby give consent to the making of the following improvement on the Holt Farm, viz.: [*Here state the improvement, as,* a pigstye in the back yard of the farmhouse; *or* laying down the eight acre piece in permanent pasture].

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

As to this form, see sect. 3, page 32. It will be best *not* to refer to the tenant's application, but to set out the improvements in full. This consent must be given after December 31, 1883.

4. CONSENT BY LANDLORD TO THE MAKING OF FIRST CLASS IMPROVEMENT BY TENANT, SUBJECT TO CONDITIONS AS TO THE EXECUTION THEREOF.

[*Date.*]

SIR,—I hereby give consent to the making of the following improvement on the Holt Farm, viz.: [*Here state improvement and condition, as,* erection of a cowshed in the Moor Field, provided it be built of brick, and slated, and be commenced within six calendar months, and completed within one year from the date hereof; *or* planting an osier bed in the north-east portion of Rushy Meadow, provided that not more than three acres be so planted]; otherwise this consent shall be void.

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

See notes to previous form.

It is important to place some limit of time within which the improvement is to be executed, for the Act gives no power to the landlord to withdraw his consent after it has once been given, nor does it provide any limit of time when the consent, if once given, ceases to avail. So that perhaps, if consent was once given, the improvement might be made (notwithstanding protest on the part of the landlord) not long before the tenant left the holding.

Sect. 59, p. 101, contains some restrictions as to improvements made by tenants about to quit, but by sect. 59 (2), these do not apply when a notice has been served and the landlord has "assented," and it might be argued that if he had once given consent such consent was in fact an "assent."

Forms of application to and consent by an authorised agent can easily be framed by comparison of the above forms with No. 9, p. 128.

Other terms and conditions may be easily framed from the agreements below.

No question as to reasonableness or fairness can arise with respect to terms imposed with consent for First Class improvements.

5. CONSENT BY LANDLORD TO THE MAKING OF FIRST CLASS IMPROVEMENT BY TENANT, SUBJECT TO CONDITIONS AS TO COST AND COMPENSATION, &c.

[*Date.*]

SIR,—I hereby give consent to the making of the following improvement on the Holt Farm, viz.: [*Here state improvement and condition, as*, erection of a stable, provided that the cost do not exceed 200*l.*; *or*, adding a new wing to the west side of the farmhouse, provided that not less than *l.* be expended on the work, and that the work be done to the satisfaction of Mr. , or of some other architect to be chosen by me, and provided you pay the fee (not exceeding *l.*), of Mr. , or such other architect, for viewing, examining, and reporting on the work; *or*, making a road from to , provided that the compensation to the tenant shall not exceed the sum of *l.*, if the claim for compensation arises within one year from the completion of the said improvement, or *l.*, less per cent. per annum for every complete year which may elapse between the completion of the said improvement and the time when the claim for compensation may arise]; otherwise this consent to be void.

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

6. CONSENT BY LANDLORD TO THE MAKING OF FIRST CLASS IMPROVEMENT BY TENANT WITH CONDITION AS TO "EXHAUSTION."

[*Date.*]

SIR,—[*Consent and description of improvement as in previous form*] Provided that the said improvement shall be deemed to be exhausted in years from the completion thereof (*or* from the present date), and no compensation

shall be payable in respect of such improvement after that period; otherwise this consent to be void.

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

7. MISCELLANEOUS CLAUSES WHICH MAY BE ADDED TO CONSENT GIVEN BY LANDLORD FOR FIRST CLASS IMPROVEMENTS.

(*a.*) Provided that the tenant make good all damage done by him to the land in executing such improvement, and especially [*Here state any damage apprehended*]; otherwise this consent to be void, and provided that before claiming compensation he put the improvement into good repair and condition, otherwise the cost of so doing to be deducted from the compensation to be awarded him.

(*b.*) Provided that in no case shall the compensation to be claimed by the tenant for such improvement exceed the sum of *l.*

(*c.*) Provided that the compensation for such improvement shall be a sum equal to times the estimated increase in the annual rental of the holding occasioned by such improvement for the purpose of letting to a yearly tenant when compensation is to be so estimated.

(*d.*) Provided that the compensation for such improvement shall be a sum equal to times the increase in the annual rateable value of the holding occasioned by such improvement at the time when compensation is to be estimated.

The latter part of (*a*) should be compared with sect. 11 of the Act of 1875, p. 117. The form (*d*) will probably seldom be found useful. For form of agreement as to First Class improvements, see below, No. 35.

8. NOTICE BY TENANT TO LANDLORD OF INTENTION TO DRAIN.

[*Date.*]

SIR,—I hereby give notice that I intend to drain the fields called Blackacre and Whiteacre, on Holt Farm, which I hold of you, in the following manner: [*Here describe the manner in which the tenant intends to drain.*]

[*Signed*] C. D. [*tenant.*]

To A. B. [*landlord.*]

See sect. 4, pp. 35-37, and see note to the next form.

9. NOTICE BY TENANT TO AUTHORISED AGENT OF LANDLORD OF TENANT'S INTENTION TO DRAIN.

[*Date.*]

SIR,—I hereby give notice to you, as the agent authorised by Mr. A. B. [*the landlord*] to receive such notices, that I intend to drain the fields called B. and W., on H. Farm, which I hold of Mr. A. B., in the following manner: [*Here describe the manner in which the tenant intends to drain.*]

[*Signed*] C. D. [*tenant.*]

To E. F., Agent for A. B.

As to service of these notices, see sect. 28, p. 72. It seems that the periods of two and three months would be reckoned from the time the notice is given to the landlord.

As to precautions to be taken in dealing with "agents," see pp. 33, 36.

10. REPLY OF LANDLORD UNDERTAKING TO EXECUTE DRAINAGE HIMSELF.

[*Date.*]

SIR,—In reply to your notice, dated the of 18 , stating your intention to drain the fields called Whiteacre and Blackacre, on Holt Farm, I beg to inform you that I undertake to drain those fields.

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

The landlord should not state the manner in which he proposes to drain the fields (see p. 36). It is best in the undertaking to refer to the previous notice if the landlord intends to *charge* the land under sect. 29, p. 73, otherwise it is needless to refer to it, and the following form is preferable:

11. ANOTHER FORM.

[*Date.*]

SIR,—I undertake to drain the fields called Blackacre and Whiteacre, on Holt Farm.

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

12. WITHDRAWAL BY LANDLORD OF HIS UNDERTAKING TO DRAIN.

[*Date.*]

SIR,—I hereby absolutely withdraw my undertaking to drain the fields called Whiteacre and Blackacre, on the Holt

Farm, which you hold of me, and you are at liberty to proceed to drain as though my undertaking, dated the day of 18 , had never been given.

A. B. [*landlord.*]

To C. D. [*tenant.*]

For form of agreement dispensing with notice, see No. 37.

13. AUTHORITY BY LANDLORD TO HIS AGENT TO ENABLE HIM TO GIVE CONSENTS, RECEIVE NOTICES, AND OTHERWISE TO ACT FOR THE LANDLORD.

[*Date.*]

SIR,—I hereby authorise you, so long as you shall continue my agent for the Dale Estate, to give consents and receive notices for the execution of improvements under the Agricultural Holdings Act, 1883, upon that estate.

[*Signed*] A. B. [*landlord.*]

To X. Y. [*agent.*]

See sects. 3, 4, pp. 32, 35. Observe that this does not attempt to authorise the agent to enter into any agreements; nor yet to give "assent" to, or receive notices from, tenants about to quit (see sect. 59, p. 101).

14. MEMORANDUM OF BENEFIT GRANTED TO TENANT IN CONSIDERATION OF HIS EXECUTING IMPROVEMENTS.

[*Date.*]

Be it remembered, that A. B., of, &c., landlord of the Holt Farm, has given or allowed to C. D., tenant of the said farm, the following benefit, viz., permission to cut down timber on the said farm for the purposes of building a shed [*describe it roughly*], and of making a fence on the east side of the field called Upper Smith's Ground, on the said farm, in consideration of the said tenant building such shed and making such fence.

[*Signed*] A. B.
C. D.

15. MEMORANDUM FOR "NEGATIVE" BENEFIT.

[*Date.*]

Be it remembered, that A. B., of, &c., landlord of the Holt Farm, has not given notice to quit to C. D., tenant of the said farm, and has not raised his rent, in consideration of the

said C. D. executing the following improvements: [*Here describe them.*]

[*Signed*] A. B.
C. D.

These two forms have reference to sect. 6 (*a*), page 48. In simple cases the former may be useful, but generally formal agreements will be preferable. Questions may be raised as to whether negative benefits like the one mentioned in No. 15 are within the meaning of the section, so that an agreement of some kind would often be safer. The tenant's signature should be obtained to each memorandum.

16. ADMISSION ON THE PART OF A LANDLORD.

[*Date.*]

SIR,—I admit that you have made on H. Farm, which you now hold of me, the following improvements: [*Here set out improvements, with dates, and any particulars which the landlord may admit, as*] planting an orchard of about four acres in Blackacre in 1884; adding a new wing to the house in 1885, at a cost of 100*l.*; applying in the years 1884 and 1885 artificial manure at a cost of 50*l.* each year; and I further admit that I gave previous consent in writing to the said planting and the making of such new wing, and that the cost was reasonable, and I admit that the said manure was good and properly applied, and that the cost thereof was reasonable.

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

As to this see "Evidence," page 73. It may be obtained whenever a landlord will give it. This would often be very useful, but too much reliance should not be placed upon it, as some succeeding landlord might dispute its statements.

17. NOTICE BY TENANT OF HIS INTENTION TO REMOVE FIXTURE.

[*Date.*]

SIR,—I intend to remove from H. Farm, which I hold of you, a fixed engine [*describe it shortly*], which now stands in the farmyard, and which was affixed to the holding after the 31st day of December, 1883.

[*Signed*] C. D. [*tenant.*]

To A. B. [*landlord.*]

See sect. 34, page 80. A month's notice must be given (sect. 34 (4).

18. RETURN NOTICE BY LANDLORD.

[*Date.*]

SIR,—I elect to purchase the fixed engine mentioned in your notice, dated the day of , 18 .

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

This is under sect. 34 (5), page 80.

19. NOTICE TO QUIT PART OF HOLDING GIVEN BY LANDLORD FOR THE PURPOSE OF IMPROVEMENTS.

[*Date.*]

I, the undersigned A. B., of, &c. [*landlord*], do hereby give you notice to quit and deliver up to me on the day of next the possession of the field called Whiteacre [*here describe it*], which you hold of me as part of the Holt Farm, situate in the parish of , and county of , held by you of me as tenant from year to year.

And I give this notice for the purpose of erecting farm labourers' cottages, with gardens, and by virtue of the Agricultural Holdings (England) Act, 1883.

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

See sect. 41, p. 86. The particular improvement for which the land is required should be stated. This notice should be served like ordinary notices to quit. Probably sect. 28 does not apply.

20. ANOTHER FORM.

[*Date.*]

I, the undersigned A. B., of, &c. [*landlord*], do hereby give you notice to quit and deliver up to me at the expiration of the year of your tenancy, which will expire at or next after the end of half a year from the time of your being served with this notice: [*Proceed as in previous form.*]

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

This latter form is intended for use when the day when the tenancy began is doubtful: (see Davidson, vol. v., p. 705.)

21. PATRON'S APPROVAL OF INCUMBENT'S CONSENT.

[*Date.*]

SIR,—I approve of your giving consent to the tenant of the H. Farm, belonging to the benefice of A., executing the

following improvements: [*Here specify them exactly as they will be specified in the consent given by the incumbent.*]

[*Signed*] E. F. [*Patron of the benefice of A.*]

To the Rev. H. K.,
Rector [*or* Vicar] of A.

This is under sect. 39, p. 84. Note that the patron's approval must be *previous* to incumbent's giving consent, and the incumbent should specify the improvements exactly as stated by the patron. Incumbent must give written consent like other landlords.

22. APPLICATION BY INCUMBENT FOR PATRON'S PREVIOUS APPROVAL, PATRON'S APPROVAL, AND INCUMBENT'S CONSENT.

17th March, 1884.

SIR,—I write to ask you to give your previous approval to my giving consent under the Agricultural Holdings (England) Act, 1883, to the tenant of the X. Farm, belonging to the benefice of A., of which you are the patron, erecting a new cowhouse in the farmyard of that farm.

[*Signed*] H. K. [*Incumbent.*]

To E. F. [*Patron.*]

19th March, 1884.

SIR,—I hereby give my previous approval as requested in the above-written letter.

[*Signed*] E. F. [*Patron.*]

To Rev. H. K.,
Vicar of A.

21st March, 1884.

SIR,—I hereby give my consent to your making the improvement mentioned in the above letter written by me.

[*Signed*] H. K. [*Incumbent.*]

To C. D. [*tenant.*]

These should all be written on one side of a large sheet of paper, and by this means the tenant can have his whole "title" on one piece of paper. Also this plan will save the patron trouble, and will avoid the risk of the patron "approving" of one thing and the incumbent "consenting" to another, which might result in the tenant losing compensation altogether.

For form of agreement between incumbent and tenant with patron's approval, see No. 38.

23. NOTICE BY TENANT OF INTENDED CLAIM.

[*Date.*]

SIR,—I intend to claim compensation for improvements

executed by me on Holt Farm, of which you are the landlord, under the Agricultural Holdings (England) Act, 1883, and for other matters under that Act. The following are the particulars of my intended claim:—

Nature of Improvement.	Date of Improvement.	Amount of Claim.
		£ s. d.
Building cowshed in home field	May-July, 1884.	[*State amount.*]
Reclaiming acres of waste land near the Old Weston Toll-bar	1884 and 1885...	,, ,,
Drainage of Blackacre and Whiteacre in accordance with agreement dated the 15th June, 1885, and made between us, under which agreement compensation is now claimed.	1885	,, ,,
Application to land of the following purchased artificial manure [*Here describe kinds and amounts*]	In the months of and , 18 .	,, ,,
Consumption on the holding by cattle of cake, viz.: [*Here describe kin and amount*].....	[*Here state approximate dates.*]	,, ,,

And for breach of your covenant to keep the roof of the house on the said farm in good repair, such covenant being contained in the lease dated the day of , 18 , and made between us.

Total amount claimed.....£ : :

[*Signed*] C. D. [*tenant.*]

To A. B. [*landlord.*]

By sect. 7, p. 53, both tenant's and landlord's notices must, as far as reasonable and practicable, state both *particulars* and *amount*. Hence, we should advise that the nature of the improvement, its locality, its date, and, where it is an improvement of the soil, such as drainage or liming, &c., its extent, should be set out.

In setting out the *amount* it is needful not to state it too low, as it may be difficult afterwards to claim higher. On the other hand, it is not wise to claim extravagantly, especially as the unreasonableness of claim as to "amount" may be a ground for loss in costs. See sect. 20, p. 67.

We have, for brevity, called the farm "Holt Farm" in these forms, but often it will be well for claimers to describe it as "in the parish of , and the county of ."

24. Counter Notice of Claim by Landlord.

[*Date.*]

Sir,—In reply to your notice of claim for compensation under the Agricultural Holdings (England) Act, 1883, I hereby give a counter notice that I intend to make a claim for compensation under the said Act in respect of the following matters:

Nature of Claim.	£ s. d.
Waste in pulling down a henhouse two years ago .	[*State amount.*]
Breach of covenant in not painting the inside of the farmhouse within the last three years of tenancy, such covenant being contained in the lease dated the day of 18 , and made between P. B. of the one part, and you of the other part.....	,, ,,
Removal of hay (tons) last year without making proper return of manure to the holding	,, ,,
Rates and taxes becoming due on the day of next	,, ,,
Total .....£	: :

[*Signed*] A. B. [*landlord.*]

To C. D. [*tenant.*]

See sects. 6, 7, pp. 48, 53. See also remarks on previous form. We mention the date of the waste committed in pulling down the "henhouse" because of the four years' limitation to such claims. See p. 49.

But often in landlord's claims, as they will be usually for omissions rather than commissions, it will be needless or impossible to put dates. As to waste, see Appendix, p.131, and p. 51.

25. RECEIPT FOR COMPENSATION MONEY RECEIVED BY TENANT WHEN LANDLORD AND TENANT AGREE.

[*Date.*]

Received of A. B. the sum of *l.*, being the balance due to me from him for compensation for improvements, and for all other claims capable of being made by me against him under the Agricultural Holdings (England) Act, 1883, after deducting all sums due or becoming due from me to him, and making all other deductions in accordance with the said Act.

[*Signed*] C. D. [*tenant.*]

[*To be stamped as a receipt.*]

The above form of receipt is not suitable when there are any outstanding claims between landlord and tenant. When the landlord is such in the capacity of an incumbent or bishop, consent to any arrangement will be often advisable. See sects. 38, 39, pages 84, 85.

26. APPOINTMENT OF SOLE REFEREE.

[*Date.*]

SIR,—We hereby, in pursuance of the Agricultural Holdings (England) Act, 1883, appoint you sole referee under that Act to settle all differences as to compensation with respect to Holt Farm.

[*Signed*] A. B., of, &c. [*landlord.*]
C. D., of, &c. [*tenant.*]

To X. Y. [*referee.*]

If the reference is to extend to "fixtures" under sect. 34 this form should be extended accordingly.

27. ADDITION WHEN LANDLORD DESIRES TO CHARGE THE LAND.

[*After the words* "Holt Farm" *add*] and the undersigned A. B. requests you, since he desires to charge his estate with the amount of compensation found due to the tenant, to specify the time at which for the purposes of such charge each improvement, act, or thing, in respect of which compensation is desired is to be deemed to be exhausted.

This need not be appended to the appointment of referee, only it may be convenient at once to inform the referee of the landlord's desire. See pages 55, 56. As to charge see sects. 19 (*d*), 29, pages 67, 73-75.

28. APPOINTMENT OF ONE OF TWO REFEREES.

[*Date.*]

SIR,—I hereby, in pursuance of the Agricultural Holdings (England) Act, 1883, appoint you a referee under that Act to settle all differences between me and C. D., of, &c., as to compensation with respect to Holt Farm.

[*Signed*] A. B.

To X. Y. [*referee.*]

This is under sect. 9 (3), page 57. It may be used either by landlord or tenant.

29. ADDITION WHEN LANDLORD DESIRES TO CHARGE THE LAND.

[*After the words* "Holt Farm" *in No.* 28, *add*] and I request you and your co-referee, since I desire to charge my estate [*Proceed as in No.* 27].

Of course this addition will only be used by the landlord.

30. NOTICE TO OTHER PARTY OF APPOINTMENT OF REFEREE.

[*Date.*]

SIR,—I hereby, in pursuance of sect. 9 of the Agricultural Holdings (England) Act, 1883, give you notice that I have appointed Mr X. Y., of 17, High-street, Canterbury, to act as referee under that Act to settle all differences between you and me as to compensation with respect to Holt Farm.

[*Signed*] A. B.

To C. D.

This is under sect. 9 (5), p. 58. It may be used both by landlord and tenant. If the party requires that the umpire shall be appointed either by the Land Commissioners or the County Court, he must so state in this notice. See sect. 10, page 59.

31. APPOINTMENT OF UMPIRE BY REFEREES.

[*Date.*]

SIR,—We hereby, in pursuance of sect. 9 of the Agricultural Holdings (England) Act, 1883, appoint you umpire for the purposes of that Act for a reference which has been made to us by Mr. A. B., of, &c., and Mr. C. D., of, &c., with respect to Holt Farm, in the parish of , and county of .

[*Signed*] X. Y. } [*referees.*]
A. Z. }

To M. N. [*umpire.*]

See sect. 9 (7), page 58. Observe that the referees are directed to appoint an umpire *before* they enter upon the reference, except they are relieved from the duty by sect. 10.

32. REQUEST BY PARTY TO REFEREES TO APPOINT UMPIRE.

[*Date.*]

GENTLEMEN, — I hereby request you, in pursuance of sect. 9 of the Agricultural Holdings (England) Act, to appoint an umpire for the purposes of that Act for the reference which has been made to you by Mr. A. B., of, &c., and myself with respect to Holt Farm.

To X. Y. }
A. Z. } [*referees.*] [*Signed*] C. D.

See sect. 9 (8), page 58. The above form may be used either by landlord or tenant. The request should be served on both referees. As to service of request, see sect. 28, page 72.

33. EXTENSION OF TIME BY REFEREES.

[*Date.*]

In pursuance of the Agricultural Holdings Act (England), 1883, s. 16, we do hereby, in the reference which has been made to us by Mr. A. B., of, &c., and Mr. C. D., of, &c., with respect to Holt Farm, extend the time for making ready our award for delivery until the day of 18 .

[*Signed*] X. Y. }
A. Z. } [*referees.*]

See sect. 10, page 63. The referees should extend the time *before* their original limit has expired, and similarly they should extend the extended time before *it* expires. For limits, see sect. 10. If the umpire wishes his time extended an application may be made to the registrar of the County Court (sect. 18, page 66).

34. FORM OF AWARD.

[*Date.*]

To all to whom these presents shall come: We [*state names of referees*] send greeting. We having been appointed referees under the Agricultural Holdings (England) Act, 1883, by Mr. A. B., of, &c. (hereinafter called the landlord), and Mr. C. D., of, &c. (hereinafter called the tenant), with respect to Holt Farm, in the parish of , and county of , having duly considered the matters under such reference, do hereby finally award that, in compensation for the improvements set forth in the first column of the following table,

which improvements were made by the tenant at the dates set forth opposite thereto in the second column thereof, the amounts set forth opposite thereto in the third column are due from the landlord to the tenant, and that for the purpose of charging the estate of the landlord such improvements are to be deemed to be exhausted at the time set forth opposite to them in the fourth column.

And we do hereby further award and direct that the landlord and tenant shall each bear and pay his own costs attending the reference made to us, except the costs of this our award, and that the expenses of this our award shall be paid by them equally. [*Here follows Table with Columns.*]

[*Signed*] X. Y. } [*referees.*]
A. Z. }

As to form of the award, see sects. 15, 17, 19, 20, 21, pp. 63-68.

The recital of the appointment of the referees will of course closely follow the wording of the documents appointing them. As to time for making award in case of referees, see sect. 16, page 63; for umpire, sect. 18, page 64. The above form, with slight modifications, will do for a single referee.

As to awarding costs, see sect. 20, page 67. As to stamp, see Appendix, page 132.

For more elaborate forms of award and various clauses relating to costs, compare Davidson, v., 692-701; Bythewood, iii., 1-154; Barton Supplement, i., 578 *et seq.*

35. Agreement for First Class Improvements.

This agreement, made the day of 18, between A. B., of, &c. (hereinafter called the landlord), of the one part and C. D., of, &c. (hereinafter called the tenant), of the other part:

Witnesseth that the landlord and tenant agree with each other as follows:

1. The tenant agrees that he will within one year from the date hereof make and execute the following improvement on the Broadacre Farm which he now holds of the landlord, viz., he will build a stable in the north-west corner of the farmyard adjoining the dwelling house belonging to the said farm. [*Here specify and describe the stable, inserting any particulars as to construction, cost, or otherwise, as may be agreed upon.*]

2. The landlord hereby signifies his consent to such improvement, but subject to the terms and conditions herein contained.

3. It is agreed that the tenant shall, if he executes the improvement in accordance with this agreement, and in a

proper and workmanlike manner, and completes the same within one year from the date hereof, be entitled to compensation under the Agricultural Holdings Act, 1883, or any statutory modification thereof as follows:

If his claim to compensation arise within one year from the completion of the said improvement, to the entire cost of the improvement exclusive of the cost of drawing materials, or to the sum of £*x*, whichever shall be the less sum.

If his claim arises after one year from such completion as aforesaid, then his compensation shall be reduced by £5 per cent. per annum for every complete year which shall have elapsed from the time of the completion of the improvement.

If the stable is not in good repair at the time of estimating the compensation as aforesaid, the cost of putting it in good repair shall be deducted from the compensation.

4. The landlord agrees that in case the tenant quits his holding on the determination of a tenancy which expires otherwise than by effluxion of time or notice to quit, the tenant, instead of giving not less than two months' notice of his intention to claim compensation in accordance with sect. 7 of the said Act, may give notice within such time (whether before or after the determination of the tenancy) as may be reasonable under the circumstances of the case, not exceeding one year after the determination of the tenancy, and such notice shall be as valid as though it were given two months before the determination of the tenancy, provided it be in writing and otherwise in accordance with the Act, and the landlord may, within three calendar months after the tenant gives such notice, give a counter notice, which shall be as valid as though it were given before the determination of the tenancy, and if any dispute shall arise as to whether the notice by the tenant was given within reasonable time, such dispute shall be decided by the referee, referees, or umpire under the said Act, but he or they shall have no power to declare the time to be reasonable if it exceeds one year as aforesaid. In witness, &c.

As to this form see sect. 3, pages 32-35. Compare Forms 4-7.

It will be best not to describe the improvement too minutely, as, if alterations in the plan are required, difficulties arise.

Clause 4 is introduced to meet the difficulty caused by sect. 7, when the term ends suddenly. See pages 54, 55. It is impossible to fix any definite time after the determination of the tenancy within which the notice should be given. In some cases there may be applications to the court under sect. 14 of the Conveyancing Act, 1881,

and they may be refused. It is best to say "a reasonable time," and to put a limit.

36. PROVISO WHEN A LANDLORD, BEING A TENANT FOR LIFE, WHO ENTERS INTO ANY AGREEMENT IMPOSING OBLIGATIONS ON THE LANDLORD.

Provided always that the obligations hereby imposed on the landlord shall not affect the landlord who is party hereto, or his real or personal representatives, after he ceases to fill the character of landlord of the said farm [*or* premises], but such obligations shall, as far as may be, bind succeeding landlords of the said farm in accordance with the said Act.

Sect. 42 enables the limited owner to make agreements. But it would be safer for the landlord, where he is a limited owner, to insert a proviso like the above in Form No. 35, and similar agreements. On the other hand it would be best for the tenant to insert a clause binding the landlord personally.

37. AGREEMENT BETWEEN LANDLORD AND TENANT DISPENSING WITH NOTICE PREVIOUS TO DRAINING BY TENANT.

This agreement, made the day of 18 , between A. B., of, &c. (hereinafter called the landlord), and C. D., of, &c. (hereinafter called the tenant):

Witnesseth that the landlord and tenant have agreed to dispense, and hereby do dispense with any notice by the tenant of his intention to drain, and that it is hereby agreed that the tenant shall drain the fields called the Lower Close, the Ings, and the Four Acre piece in the following manner: [*Here describe the manner in which it is agreed that the drainage work be carried out*]; and it is further agreed that the tenant shall commence the said drainage within months, and shall complete it within months from the date hereof. In witness, &c.

It is best in an agreement not to insist on too many details with regard to the mode of executing the work, and wide limits should be given as to time, see page 43.

Compare Form of notice, page 137. Clause 4 of No. 35, page 149, may be added for the tenant's protection if desired.

38. AGREEMENT WHERE LANDLORD IS INCUMBENT OF ECCLESIASTICAL BENEFICE, AND PATRON JOINS TO GIVE PREVIOUS APPROVAL.

This agreement, made the day of 18 , between

E. F., of, &c., patron of the benefice of X. (hereinafter called the patron), of the first part, A. B., vicar of X. aforesaid (hereinafter called the landlord), of the second part, and C. D., of, &c. (hereinafter called the tenant), of the third part:

Witnesseth:

1. The patron doth hereby, by signing this agreement previously to the other parties hereto, signify his previous approval in writing thereof, and of this exercise of powers by the landlord. [*Here set out the terms of the agreement between the landlord and tenant.*] In witness, &c.

[*Signed*] E. F. [*patron.*]
A. B. [*landlord.*]
C. D. [*tenant.*]

It would be best to have this form witnessed, and the attestation clause should show that the patron signed first: see sect. 39, page 84. This form will do for many kinds of agreement under the Act. As to the terms of the agreement, see various forms of agreements between landlord and tenant. Subject to the patron's previous approval, an incumbent can act like other landlords.

39. Clause in Agreement protecting the Sitting Tenant.

The landlord and tenant hereby agree that if on the determination of a tenancy the tenant shall not quit his holding, but shall remain thereon at an increase of rent, he shall be entitled at such determination of a tenancy to compensation, as though he were then also quitting his holding.

As to the "sitting tenant," compare Government Memorandum, pages 21, 24. The Act gives him no compensation (see sect. 1, page 25 and pages 2, 44), but protects him from actually losing all future claims by remaining (sect. 58, page 101). The above clause, and clause 4 in No. 35, are those which specially advantage tenants. See also Form 44, page 159.

40. Agreement under sect. 5 of the Agricultural Holdings Act, 1883, giving "Specific Compensation" for Third Class Improvements in the case of a "Present Tenancy."

This agreement, made the day of 18 , between A., of, &c. (hereinafter called the landlord), of the one part, and B., of, &c. (hereinafter called the tenant), of the other part:

Witnesseth that the landlord and tenant hereby agree that

the tenant shall be entitled to the compensation hereinafter provided for the improvements hereinafter mentioned executed by the tenant on the H. Farm after the 31st Dec., 1883, subject to the terms and conditions hereinafter mentioned, and that such compensation shall be deemed to be substituted for compensation under the Agricultural Holdings (England) Act, 1883.

1. The amount of the tenant's compensation in respect of any improvements mentioned in the schedule hereto shall (subject to the provisions hereinafter contained) be the sum properly laid out by the tenant on the improvement with a deduction of the proportionate part thereof set forth in the second column of the said schedule opposite to such improvement for each and every year while the tenancy endures after the year of tenancy in which the outlay is made; but such improvement shall be deemed to be exhausted, and no compensation shall be given for the same, after the lapse of the number of years mentioned in the third column of the said schedule after the said year of tenancy.

2. The amount of the tenant's compensation for the "application to land of purchased artificial or other purchased manure," if applied during the last year of the tenancy, shall be one th part of the sum properly laid out by the tenant on the improvement, and if applied during the last year but one of the tenancy one th part of such sum.

3. Where after manure mentioned in clause 2 has been applied, and there has afterwards been taken from the portion of the holding to which it was applied a crop of corn, potatoes, hay, or seed [*mention any other crop deemed specially exhausting which it is desired to include*], a reduction of one th part shall be made from the compensation otherwise payable in respect of the application of such manure.

4. The amount of the tenant's compensation for the consumption on the holding during the last year of the tenancy by cattle, sheep, or pigs, of cake or other feeding stuff not produced on the holding, shall be one th of the net cash reasonable price thereof.

5. In estimating compensation under clause 4 there shall not be taken into account any larger outlay during the last year of the tenancy than the average amount of the tenant's outlay for like purposes during the three next preceding

years of the tenancy or other less number of years for which the tenancy has endured.

6. No further compensation shall be given for any of the improvements above mentioned or referred to than is herein provided, and the improvements mentioned in clauses 2 and 4 shall be deemed to be exhausted after the periods have elapsed during which compensation is hereinbefore provided in respect thereof.

7. The compensation estimated as above shall be reduced or augmented in accordance with the said Act, and the tenant may claim, and the landlord counter-claim, in manner in the said Act provided, and the procedure shall in all respects be in accordance with the said Act except as is otherwise herein provided, but the right of the tenant to compensation as aforesaid shall arise at the determination of his tenancy, whether he quits the holding or not.

8. The landlord agrees that, in case the tenancy determines otherwise than by effluxion of time or notice to quit, the tenant, instead of giving not less than two months' notice of his intention to claim compensation in accordance with sect. 7 of the said Act, may give notice within such time (whether before or after the determination of the tenancy) as may be reasonable under the circumstances of the case, not exceeding one year after the determination of the tenancy, and such notice shall be as valid as though it were given two months before the determination of the tenancy, provided it be in writing, and otherwise in accordance with the said Act, and the landlord may within three calendar months after the tenant gives such notice give a counter notice, which shall be as valid as though it were given before the determination of the tenancy, and if any dispute shall arise as to whether the notice by the tenant was given within reasonable time, such dispute shall be decided by the referee, referees, or umpire under the said Act, but he or they shall have no power to declare the time to be reasonable if it exceeds one year as aforesaid.

9. This agreement shall also apply to the following improvements which (as the said landlord hereby admits) were executed by the said tenant on the said farm within ten years before the 1st January, 1884, viz. [*here follows list of Third Class improvements executed*], and the tenant doth hereby admit that he is not entitled to compensation for execution before the date of these presents of any of the

following improvements [*here follows list of Third Class improvements which have not been executed*]. In witness, &c.

The Schedule referred to in the above agreement.

Improvement.	Proportionate deduction for each year.	Number of years when improvement to be deemed exhausted.
Boning of land with undissolved bones		
Chalking of land		
Clay burning		
Claying of land		
Liming of land		
Marling of land.....		

The two improvements mentioned in clauses 2 and 4, and the six in this schedule, comprise the whole of the Third Class improvements. If the landlord is a limited owner, it will be safer for him to add some words in clause 8 excluding personal liability on his agreement. See Form 36, page 150.

It should be noticed that this form of agreement contains a clause (8) preventing the tenant from losing his rights to compensation in consequence of a sudden termination of his tenancy by forfeiture or otherwise (see notes on sect. 7, pp. 53, 54), and that the sitting tenant is protected by clause 7. Clause 9 is to provide for cases under sect. 2, as that section gives compensation for Third Class improvements executed since 1873, unless compensation is otherwise provided. It is best, both for landlord and tenant, that it should be positively stated at the present time what improvements have been made. We strongly advise landlords to be liberal in their compensation.

This agreement for specific compensation should be executed before 31st December, 1881. It is not clear whether, after that date, specific compensation will suffice, or whether it must be "fair and reasonable" compensation. See sect. 5, pp. 38-42.

The Act (sect. 5) authorises two kinds of agreements for this purpose, viz.: (1) in the case of "existing" tenancies (*i.e.* those under contracts of tenancies current on Jan. 1, 1884), agreements giving *specific* compensation; (2), in the case of "future" tenancies agreements giving "fair and reasonable" compensation. It is not easy to say, or even to guess, what will be held to be "fair and reasonable;" it will therefore be better, in the case of existing tenancies under leases, for landlords and tenants, if any agreement is desired, to enter into agreements providing "specific" compensation before the Act comes into force. We limit this remark to "leases," because by virtue of a definition in sect. 61, which is really a piece of legislation, a yearly tenancy current on Jan. 1, 1884, will before long

become a "futnre tenancy;" and we advise that the agreement should be made before the commencement of the Act, as otherwise doubts may be raised as to its validity.

40a. ADAPTATION OF ABOVE FORM FOR "FAIR AND REASONABLE" COMPENSATION.

Form 40 can be easily adapted so as to give fair and reasonable compensation within sect. 5 of the Act. Indeed it very probably does so as it stands—provided, of course, that the "amounts" and "years" and "proportions" are calculated with sufficient liberality to the tenant. However, to make it clearly fair and reasonable, it may be best to omit clause 5. But see Form 41 and the notes to that form.

41. AGREEMENT UNDER SECT. 5 OF THE ACT INTENDED TO GIVE FAIR AND REASONABLE COMPENSATION FOR THIRD CLASS IMPROVEMENTS.

[*Parties and the introductory clause from "witnesseth" down to* "1883" *inclusive, as in No.* 40.]

1. The amount of the tenant's compensation in respect of an improvement mentioned in the schedule hereto shall, subject to the terms and conditions herein contained, be the sum properly laid out by the tenant on the improvement, with a deduction of *one-seventh* part thereof for each year while the tenancy endures after the year of tenancy in which the outlay is made, [and while the improvement remains unexhausted, but in no case shall the improvement be deemed to remain unexhausted more than seven years beyond the year of tenancy in which the outlay is made.]

2. The amount of the tenant's compensation for the "application to land of purchased artificial or other purchased manure," if applied during the last year of the tenancy, shall be one th part of the sum properly laid out by the tenant on the improvement, and if applied during the last year but one of the tenancy one th part of such sum.

3. Where after manure mentioned in clause 2 has been applied, and there has afterwards been taken from the portion of the holding to which it was applied a crop of corn, potatoes, hay, or seed [*mention any other crop deemed specially exhausting which it is desired to include*], a proportionate reduction shall be made from the compensation otherwise payable in respect of the application of such manure.

4. The amount of the tenant's compensation for the con-

sumption on the holding by cattle, sheep, or pigs, of cake or other feeding stuff not produced on the holding, shall be the one th part of the net cash reasonable price of such as is consumed during the last year of the tenancy, and the th part of such price of such as is consumed during the last year but one of the tenancy.

5. The compensation estimated as above shall be reduced or augmented in accordance with the said Act, and the tenant may claim, and the landlord counter-claim, in manner in the said Act provided, and the procedure shall in all respects be in accordance with the said Act, except as is otherwise herein provided.

6. The tenant shall not be entitled to claim on determination of a tenancy, except he also quits the holding; but sect. 58 of the said Act, protecting him from being deprived of compensation by change of tenancy while he remains in the holding, shall apply to this agreement.

7. The landlord agrees that, in case the tenant quits the holding on the determination of a tenancy which determines otherwise [*Proceed as in clause* 8 *of No.* 40, *page* 153]. In witness, &c.

The Schedule referred to in the above Agreement.

[*Same as Schedule to No.* 40, *page* 154, *except that the third column is omitted.*]

This is *intended* to be "fair and reasonable" under sect. 5, p. 38.

It is to be executed after the 31st December, 1883, and may be used either for present or future tenancies. It must not be executed before that date for a tenancy commencing in 1884. It may be executed before 1884 for a tenancy then existing, as it would then be an agreement for "specific compensation."

It will be noticed that we have, in clause 1 of this agreement, followed very closely the mode of computation employed in the Act of 1875, ss. 6, 8, pp. 116, 117.

The portion in brackets in clause 1 follows that Act, but it is not quite clear that it would be held reasonable.

We have avoided restricting compensation for cake, &c., to the average of three years, because a doubt has been raised as to whether such a restriction is reasonable, though we think it is.

With regard to exhausting crops, see sect. 13 of the Act of 1875, p. 117.

With regard to the amount of compensation for artificial manures and cake, &c., much must depend on circumstances. We can lay down no general rules. It may, however, be worth while to quote from Mr. Cooke's interesting "Epitome of Customs" the following

scale adopted by the Lincolnshire Land Agents and Tenant Right Valuers Association, and cited by Mr. Cooke (a) at p. 120 :—

Cake.—Half the cost of linseed, cotton, and rape cake consumed during the last year, the quantity not to exceed the average of the two preceding years.

Lime.—Seven years' principle on costs, including railway carriage, cartage, and spreading.

Marling.—Seven years' principle.

Artificial manures used with green crops.—Whole of last year's bill and railway carriage.

Bones used on grass land.—Dry bones seven years' principle; dissolved bones three years' principle. The bills to be certified by the landlord or his agent during the year of application.

In Lincolnshire (b) there is sometimes allowed for claying, liming, and boning pastures with undissolved bones, the cost of that done last year, with a proportionate annual deduction of one-fifth for such outlay in previous years.

Form 41 may be used also as an agreement giving specific compensation. Form 40 compensates the sitting tenant, but Form 41 does not, although it can easily be altered so as to give him compensation.

42. CONSENT BY LANDLORD TO PAYMENT OF COMPENSATION TO OUTGOING TENANT BY INCOMING TENANT.

[*Date.*]

SIR,—I hereby, as landlord of H. Farm, of which you are the incoming tenant and Mr. C. D. the outgoing tenant, give consent to your paying Mr. C. D. the following compensation, payable under or in pursuance of the Agricultural Holdings (England) Act, 1883, in respect of the following improvements: [*Here fully state and describe the improvements, with the dates of their execution and amounts of compensation, and state how the compensation has been ascertained.*]

A. B. [*landlord.*]

To E. F. [*incoming tenant.*]

This is under sect. 56, page 160. When ecclesiastical incumbent is landlord he should get previous approval of Queen Anne's Bounty or patron (see sect. 39, page 84).

It is best for the incoming tenant that the landlord's consent should describe the landlord and the outgoing and incoming tenants as such, as it might, when incoming tenant in his turn claims, afford evidence of those facts. It is obviously best for all parties that the improvements should be, as far as is reasonably possible, properly described, so as to prevent mistakes on either side in the future. Where im-

(a) See page 131, above.

(b) Cooke, page 119.

provements have been made with "consent," after "notice," or under agreement, it should be so stated. Observe that sect. 56 speaks of "compensation for any improvement," so it evidently contemplates that each improvement shall be specified, and not merely a lump sum agreed upon.

The *amount* of compensation may, however, be agreed upon between the landlord and outgoing tenant; awarded by the referees or umpire; or ordered to be paid by the court.

43. Extract from (Scotch) Estate Regulations [a] of the Duke of Richmond and Gordon.

Ninth.—The tenant shall be entitled to follow any system of cropping he may prefer, but shall be bound at all times to cultivate the farm according to the rules of good husbandry, and properly to work, clean, and manure the same and keep it in good heart and condition, and he shall annually apply to the lands the whole dung made on the farm, except the dung made from the crop of the year immediately preceding the Whitsunday [b] of removal. The tenant shall consume on the farm the whole straw, turnips, and other green crops grown upon the farm in the year immediately preceding the Whitsunday of removal, and shall deliver over the dung produced therefrom to the landlord or incoming tenant at valuation, as after mentioned. The landlord reserves the right at any time, by giving written notice to the tenant, to prohibit and prevent the tenant, should he think proper, from selling any straw, potatoes, turnips, or other green crop. The tenant, in a lease for a term of years, shall, during the last four years of the lease or tenancy, be bound to consume on the farm the whole of the straw, turnips, and other green crops.

Tenth.—The outgoing tenant shall, at his removal, have a claim for compensation from the landlord or incoming tenant, for the unexhausted value of lime and the extraneous manures after specified, purchased and applied to the arable lands, and also for the unexhausted value of the extraneous feeding stuffs after specified, purchased and used in feeding sheep or cattle in houses or yards and on arable land, as follows:—

Lime.—For the net cash price or value of lime exclusive of carriage and cartage, under deduction of two-tenths thereof for the first crop grown or reaped after the application, two-tenths for the second crop, two-tenths for the third crop, and one-tenth for each of the four subsequent crops.

Bones.—For the net cash price or value of inch undissolved bones, exclusive of carriage, under deduction of four-tenths thereof for the first crop grown or reaped after the application, two-tenths thereof for the second crop, two-tenths thereof for the third crop, and one-

[a] Published in the *North British Agriculturist*. See page 111, above.

[b] This is a fixed day in Scotland.

tenth thereof for each of the two subsequent crops. For the net cash price or value of undissolved mixed bones, bone dust, and bone meal, exclusive of cartage, under deduction of six-tenths thereof for the first crop grown or reaped after the application, three-tenths for the second crop, and one-tenth for the third crop.

Dissolved Bones.—For the net cash price or value, exclusive of cartage, of dissolved bones, under deduction of four-fifths thereof for the first crop grown or reaped after the application, and one-fifth for the second crop.

Feeding Stuffs.—First, for such part of the net cash price or value of linseed, cotton, or rape cake consumed by cattle in houses or yards, in the last year of the tenancy, as may be fixed by the arbiters when valuing the dung at the outgoing tenant's removal, to be the value added to the dung by the consumption of such cake. Second, for the net cash price or value, exclusive of cartage, of linseed, cotton, or rape cake consumed by cattle or sheep, along with grass or turnips, on the land, under deduction of five-sixths thereof for the first crop grown or reaped after the crop along with which the cake has been consumed, and one-sixth for the second crop. Grass, whether grazed or cut, shall at all times be counted as a crop; and the waygoing crops to be taken at valuation by the landlord or incoming tenant, as hereinafter provided, shall be held to be crops grown and reaped by the outgoing tenant. All claims for compensation must be accompanied by vouchers for the purchases, a written declaration by the tenant, certifying the dates and manner of the application or consumption of the article, and in the case of manures and feeding stuffs, by a guaranteed analysis, from a respectable merchant, from whom the same were purchased, and in all cases be substantiated by proof of the application or consumption of the articles, and of the quality and value thereof.

44. The Farmer's Agreement.

This agreement, made the day of 18 , between A. B., of, &c. (hereinafter called the landlord), of the one part, and C. D. (hereinafter called the tenant), of the other part: Witnesseth that the landlord and tenant hereby agree that, on the determination of the tenancy, the tenant shall be paid the compensation hereinafter provided for improvements and for the matters hereinafter mentioned, executed by the tenant on H. Farm, subject to the terms and conditions hereinafter mentioned, and that such compensation shall be deemed to be substituted for compensation under the Agricultural Holdings (England) Act, 1883 [and that certain provisions shall be made in favour of the landlord].(a)

1. The landlord will pay to the tenant whatever sum (if

(a) The portions in square brackets may be omitted if desired.

any) shall be the increased selling value of the farm as an agricultural holding occasioned by the improvements made by the tenant (whether such improvements are included in the Agricultural Holdings Act, 1883, or not) or by his husbandry or cultivation.

[2. If the selling value of the farm as an agricultural holding is diminished by the acts or omissions of the tenant, whether by his bad or insufficient husbandry or cultivation, by his waste or dilapidation, or otherwise howsoever by him, the tenant will pay to the landlord whatever the sum may be by which such selling value is diminished.]

3. The compensation to be estimated as above [whether payable to tenant or landlord] shall be augmented or reduced by taking into account the matters and things mentioned in sect. 6 (a) of the said Act so far as they are not reckoned in the above estimation.

4. No consent or notice shall be requisite for any improvements [but nothing in this agreement shall entitle the tenant without previous consent of the landlord in writing to pull down any buildings, or cut down any timber or trees, for any purpose whatever, or to commit any waste, except that it shall be lawful for the tenant to commit ameliorating waste when necessary for the execution of improvements].

5. Compensation shall be payable at the determination of the tenancy, although the tenant remains in his holding.

6. *Insert clause 8 of No. 40, page 153, which protects the tenant in case of a sudden determination of the tenancy.*

7. The procedure on a claim by the tenant for compensation shall be in accordance with the said Act, except as is hereby varied, although some of the matters comprised in this agreement are not improvements under that Act, but there shall be no appeal by either party from the decision of the referees or umpire on any point whatever.

[8. It shall be competent for the landlord to claim compensation under this agreement, although the tenant has made no claim, and in such case the landlord may send in his original claim at any period within which he might have sent in a counter-claim had the tenant sent in a claim. In case the landlord sends in an original claim under this provision, it shall be competent for the tenant to send in a counter-claim within two calendar months after the time when the landlord's original claim has been given him. Any

(a) See page 48.

such claim or counter-claim must be in the like form and may be served as claims under the Act, and shall be subject to the provision in clause 7 above against any appeal.]

9. In this agreement the words "landlord" and "tenant" shall bear the extended meaning given them by the said Act; but the obligations imposed hereby on the landlord shall, if and so far as they are not satisfied by the person who shall be the landlord within the meaning of the Act, be a liability on the said A. B., his heirs, executors, and administrators. In witness, &c.

This we have called the Farmers' Agreement, as it seems to meet, so far as voluntary agreement can, the various points urged in the resolutions of the "Farmers' Alliance" printed below. The portions in square brackets are not essential parts of the agreement, but may be supposed to be added by the advisers of the landlord.

The principle of the agreement is to let the tenant "reap what he sows" in the fullest sense. The Act gives no compensation for good husbandry, &c., and only for twenty-three improvements.(*)

With regard to waste, see pages 51, 131.

As to sitting tenant, see pages 2, 21, 25, 44, 101.

As to procedure, see sect. 7, page 53.

As to extended meanings of "landlord" and "tenant," see pages 15, 26, 104. As this agreement is not simply a variation of the Act, but a distinct extension, it seems advisable to insert clause 9.

This agreement is not altogether within sect. 42, p. 88, and is not suitable for limited owners unless they are willing to be personally responsible, and to make their own property liable.

The following resolution was passed on Oct. 29, 1883:

1.—That this conference of the Farmers' Alliance, specially summoned to consider the provisions of the "Agricultural Holdings Act, 1883," regards the measure as only valuable so far as it is a further recognition by Parliament of the rights of tenant farmers to compensation for their improvements, and cannot accept it as a settlement of the question of tenant right, and mainly for the following reasons:—(1) Because the first schedule contains no provision for compensating a tenant for raising the condition of a holding by improved husbandry; and under the provisions of the Act, in respect of parts 1 and 2, the tenant is practically deprived of the power to make improvements; (2) Because the proviso added to the first clause in respect of "the inherent capabilities of the soil" is contrary to the true though limited principle of tenant right asserted by the clause; and is not only inconsistent with the clause itself, but is calculated to deprive the occupiers of the land of the just reward of their skill and outlay; (3) Because the first clause of the words,

(*) See page 3.

"on quitting his holding," limits the Act to outgoing tenants; and no provision is made by the Act for securing an improving tenant against being rented upon his own improvements; (4) Because the "particular agreements" permitted under Clause 4, in respect of compensation provide for an evasion of the limited instalment of the tenant right which the Act concedes.

The fifth head of the resolution related to the law of distress, and the sixth objected to the appeal from the referees and umpire.

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[*See also Table of Contents at the beginning of the work. For Index to the Forms and Precedents, see below.*]

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